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# **FAREWELL TO ROUSSEAU**





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*A Critique of Liberal-Democracy*

BY  
CLAUD SUTTON

TUTOR, ST. PETER'S HALL, OXFORD

*With an Introduction by*  
DR. W. R. INGE  
K.C.V.O., F.B.A.



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## INTRODUCTION

*By* THE VERY REV. W. R. INGE, D.D.

**T**HOSE who have lived seventy years or more in this world have assisted at the funerals of most of the shibboleths of their youth. If they never believed in them, they may enjoy one of the consolations of old age. When I was young, a man would have been laughed at if he had hinted that liberty and democracy were the dogmas of a creed outworn. But now it has become clear that, whoever won the Great War, the nations, which drew the sword "to make the world safe for democracy" succeeded only too well in killing their protégé. The emperors have gone, but the little finger of a dictator is thicker than the loins of a Tsar, Sultan or Kaiser.

Is this a final defeat of those principles which in the last century were taken for granted by almost everybody? Has the civilized world turned its back, once for all, on the course of civil, political and religious evolution which our nation was the first to tread, and which the rest of the world seemed prepared to follow? Mr. H. A. L. Fisher does not think that the defeat is final. Freedom, he says, is still "firmly established" in Britain and the Dominions, as well as among the French, the Dutch, the Scandinavian and American peoples. Mr. Sutton in this book is doubtful whether it is firmly established even in its original homes. He thinks that France and England may end by abandoning democracy. Assuming that the ideals of the English

and French revolutions are really dead, he discusses their possible successors. He points out that Nature proceeds by the evolution of relatively rigid types—a remarkable fact in itself. If this law or method applies to humanity—and we may suppose that it does—we ought to recognize that there are hereditary aptitudes which make it impossible to turn out a whole nation on the same pattern, as the Liberals wished to do. A modified caste system without any impassable barriers would probably work better than equalitarian democracy, especially as there are natural rulers, who ought to rule. Here we may probably trace the influence of Plato on Mr. Sutton's thought. We should not have to go back far in either English or French history to find a modified caste system on an aristocratic basis. But while only a hundred years ago few were willing to admit that our government was or ought to be "democratic," there never has been a time when even extreme Tories would have agreed with Lenin that "liberty is a bourgeois conception".

The "ideas of 1789" were Liberty, Equality and Fraternity, to which was significantly added, "*ou la mort*". Of these three, we have most valued the first, the French the second, the Americans the third. But Fraternity—democracy as a form of society—has no necessary connection with democratic Liberalism as a form of government, so no more need be said of it here. Let us ask, without following Mr. Sutton very closely, what are the real merits of the liberal-democratic State, what are its alleged merits, and what are its real defects. The answers can be given only in the most cursory manner.

The diffusion of a sense of responsibility which follows from the theoretical identification of the rulers and the ruled has a positive value.

The educational worth of this responsibility, though it

is often exaggerated, is not negligible. The British are politically much more mature than nations which have had no experience of popular government.

A broad base gives stability. Violent upheavals seem to be less common in democracies.

The gradual approach to equality of consideration is probably a good thing.

The liberty which we enjoyed all through the last century was proclaimed by Liberalism as an elementary right. It has yet to be proved that it can be enjoyed under any other system. How great a boon liberty is we shall know if we ever lose it.

The humanitarian movement coincided with Liberalism, and seems to be closely connected with it. The eclipse of Liberalism has been accompanied by a wholly unexpected revival of cruelty and contempt for human life.

Among alleged merits, which we cannot accept, is Rousseau's doctrine of a common will. The common will is a figment, a piece of mysticism where mysticism is least appropriate, and in practice a stick for the backs of minorities. The sole truth at the bottom of it is that democracy is possible only when there is an underlying consciousness of unity in a nation. Any strong anti-social faction, striving exclusively for its own ends, must wreck democracy, which postulates at least a minimum of loyalty and public spirit.

Pacifism is not a characteristic of democracies, though it is a characteristic of middle-class governments. In aggressiveness and greed for territory there is nothing to choose between empires and republics. For one thing, an emperor may be a puppet, a president an autocrat.

Among real defects we must give the first place to inefficiency and wastefulness. So far as the populace controls policy, it is entirely incompetent. The notions

that politics requires no special training, that one man's vote is as good as another's, and that education can create intelligence and high character where they are absent, are superstitions which have brought the whole system into deserved discredit. And when a people is divided into two nations, the tax-payers, who are virtually disfranchised, and the tax-eaters who form the bulk of the electorate, the consequences are such as might have been confidently predicted.

Next, the coinage of politics is debased. Politics have become "a filthy trade", as I heard one of our most high-minded statesmen say. The best men do not care to soil their hands with it, and the House of Commons has lost most of its old prestige. This disgust with politics and politicians is even more marked in France than in Great Britain, where old tradition still keeps public life relatively respectable.

Government by mass-suggestion reveals an utter contempt for the intelligence of the electorate. Irrational appeals, by catchwords, falsehoods and emotional excitation, have been erected into a fine art. The art of the demagogue is that of the parrot; by the endless repetition of some senseless slogan he hypnotises the mob, or rouses it to insane fury. As Bertrand Russell says, "All the great forces in the world are in the hands of men who flatter King Demos in order to lead him astray".

Vexatious and inquisitive tyranny is much more pervasive in the United States than with us. The herd suspects and hates any peculiarity of conduct as an insult to itself. Over-legislation has now become a vice of democracies, though Cicero says truly, *Corruptissima república plurimæ leges*.

The weakness of the executive is apparent in the face of any outbreak of sectional treason, such as a revolutionary strike.

Ignorant opposition to change on the part of the herd

makes several important reforms, which all men of science know to be imperative, quite impossible.

Power is always abused ; but the new privileged class, though individually good-natured, humorous and amiable, do not seem likely to contribute much to the greatness of their country. A huge parasitic class has been created, which can only become more and more demoralized. *Panem et circenses*—doles and cinemas ; with the covetous eyes of half a dozen eager nations fixed on Britain's vast and half-empty Dominions, which she will neither people herself nor open to them. It is not a pleasant prospect.

The equanimity with which one great nation after another has allowed itself to be deprived of all its liberties is a measure of the disillusionment which has fallen upon Europe. All that the peoples have struggled for, and shed their blood for, from generation to generation, has been abandoned without a blow. We can understand that there is not much faith left in democracy, though in America incense is still burned before that fetish ; but was not liberty worth preserving ? " You may preserve the shadow of liberty," says Lucan bitterly, " if you *will* whatever you are ordered to do " ; but it is only the shadow, not the substance, which is so maintained.

At present, Europeans seem eager only to obey. Where there is no vision, the people perish ; and just now only two visions seem to float before the eyes of the young. One is aggressive militarism and wars of conquest ; the other is the economic materialism of Marx and his followers. Can either of these horrible perversions dominate the course of the civilized world ? It is difficult to believe it. Like Mr. Sutton, I turn wistfully to Plato's *Republic*, to be ruled by an ascetic community of carefully selected and intensively trained supermen, removed from all possibility of maladministration in their own interests. That is the State, says Plato, of which the type is laid up in heaven.



Will it ever be realized on earth ? He does not think so ; but we may be citizens of it, none the less. And when the philosopher-seer comes down into the arena, as Plato says he must do from time to time, he may at any rate show the contending " interest-groups " that by their short-sighted and unethical rivalries they are ensuring the downfall not only of their opponents but of themselves. This is what Mr. Sutton has shown us in this book.

W. R. I.

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*"The birth of the European may be delayed; the march of events that is bringing this to pass may slow down, may suffer relapses, gaining thereby in vehemence and depth—one such relapse will come from the still raging storms of frantic nationalism. I think the results of this process will be such as utterly to confound all the naïve advocates of 'progress', the apostles of 'modern ideas'. These new conditions of life that are calculated to level men down to an equal mediocrity—to produce a useful, industrious, herd-animal type of human being, easily employable for all sorts of purposes—are peculiarly likely to give birth to a few exceptional men of most dangerous and fascinating quality. While the general type of the future European will be that of the garrulous, will-less, extraordinarily suggestible worker, who needs an employer to give him orders as he needs his daily bread; here and there we shall see the strong man becoming stronger and more talented than ever, thanks to the lack of traditions and prejudices and the immense variety of the environment in which he has been brought up. My belief is, that democratised Europe will turn out to be a training-school and a breeding-ground for Tyrants, in every sense of the word."*

NIETZSCHE (1886)

*"My brothers, we need a new nobility, one that will set its face against all that is plebeian and all that is tyrannical. Many 'nobles' and many sorts of 'noble' we need, that there may be Nobility upon earth."*

NIETZSCHE



**PART ONE**  
**PRESENT FASHIONS AND**  
**FIRST PRINCIPLES**



## CHAPTER I

### INTRODUCTORY

He gives every taste an equal chance, yielding himself now to one, now to another, not despising any, but being fair to them all.

PLATO : *The Born Democrat*

THE title of this book is intended as a profession of faith—of the writer's belief that the era of the liberal-democratic state, heralded by Locke and ushered in by Rousseau, has come to an end. The form of state which it seems will be typical of the new era, and which may best be labelled Authoritarian Popular Aristocracy, is not yet fully visible. The rule of a selected, trained and privileged élite developed first in Russia through the mere logic of events and contrary to all orthodox Marxist theory ; the founders of Fascist Italy realized better what they were about ; National-Socialist Germany exemplifies the new kind of state in the most self-conscious form it has yet achieved ; and there are lesser states which illustrate the same system. But a systematic theory, which brings the new into relation with the old, which shows what circumstances lead to the development of the one form or the other, and which exhibits the operation of the same fundamental principles of human nature in both, remains to be written. This book is far from being a system of political theory ; it was at first entitled " A Programme ", and was intended merely to outline some of the problems which ought to be discussed, and are not, by an up-to-date political theory. Its gaps are painfully apparent. But the situation in which our country at present finds itself seems to make



its publication timely. The bulk of it was written two years ago, when Liberal-Democracy was much firmer in the saddle than it is to-day.

Biological science has not as yet been able to dispense with the conception of a "sport", "*lusus Naturæ*"—a form thrown up as it were accidentally in the course of development, inexplicable, without influence upon the course of future evolution of the types which it recognizes and studies. But what should we think of a biological science that treated as "sports" *the great majority* of the forms of living beings—the majority of those we find before us to-day, and the majority of those we find preserved in the fossilized records of the past? Yet this is the condition of political theory at the present day. It is through and through a theory of Democracy, and in the main of Representative Democracy. Yet Democracy, however defined, never at any period occupied more than quite a small area of the political map of the world.

It might be objected that the mere area of the world which is democratically governed is no indication of the real importance of this form of government. It might be, and has been, asserted that democracy is synonymous with civilization. But such an assertion would be hard to justify. The great achievements of mankind in the arts and the sciences, in religion and philosophy, in the exploring and taming of the earth seem rather to have taken place under aristocracies and monarchies. This is only natural when we reflect *how slight* has been man's experience of democracy in any form. A few city states in the ancient world, a few more in Europe of the late Middle Ages and Renaissance, a few countries in Western Europe and America during the nineteenth and early twentieth century, and the tale is told. The assertion that civilization and democracy go hand in hand can only rest upon a fantastic over-valuation of the achievements

in technology and applied science of Britain, France and the United States during the last seventy years or thereabouts.

Again, it might be, and has been suggested that democracy is the stable and enduring form of government, the natural resting-place of human endeavour, whereas all the other forms of political association are but transitional stages leading up to this. I think this is the underlying belief which leads political theorists to attach such undue importance to democracy, to treat it as the only true form of government and all other forms as "perversions"—Aristotle's term seems very appropriate to describe the way in which they are accustomed to treat these. Now such a belief is hard to test owing to the particular epoch in which we happen to live—an epoch in which a certain "representative" form of democracy has been relatively common. But the facts do not seem to confirm it. In the first place, a survey of the "direct" democracies of antiquity and the late Middle Ages does not suggest that democracy is a particularly stable or enduring form. In the second place, in spite of the prestige which this form of government acquired through the victory of France, Britain and the U.S.A. in the World War, we seem to be in the midst of a strong and widespread revolt against it. There seems to be a widespread feeling that it has proved incapable of fulfilling the purposes for which government exists and men associate in states. This *may* be but a momentary setback to the universal triumphant march of representative democracy; the democratic theorists and propagandists may be right in explaining the new "dictatorships" as "sports" or "throw-backs". Time alone can show. None the less, it may be worth while for one who does not take this view, who believes that we stand at the end of an epoch and are at present groping our way towards more stable and adequate forms of government, to make an attempt

to remodel political theory in accordance with this belief.

For there is always a danger that preoccupation with those few phenomena which are of the greatest practical importance at the moment will stultify the progress of a science. This preoccupation may prevent the thinker from extending his view widely enough, so that he is unable to form a net of conceptions sufficiently abstract to catch all the new phenomena as they occur. The instability of the social sciences seems in the main to be due to this fact. The thinkers of each century have built upon conceptions drawn from the particular forms of society known to them, and not easily applicable beyond the forms of city-state, world-empire, feudal monarchy, enlightened absolutism, or Whig constitutionalism prevalent in their own day. Our age, having at its disposal a far greater panorama of historical knowledge than any previous age, should be better able to free itself from this defect. Yet there is still little agreement as to the fundamental conceptions of political and of economic science—little common basis of discussion to be found for instance between a capitalist and a Marxist in economics or a national-socialist and a liberal-democrat in politics. It is true there are certain conceptions such as "general will" in Politics and "marginal utility" in Economics which have achieved great vogue in western Europe and the United States of America. But they seem to be so closely associated with the particular systems of representative democracy and capitalistic production-for-exchange that they are not sufficiently extensible to cover all the new phenomena. Before the economic phenomenon of Russia or the political phenomenon of Germany most of the western European theorists gape impotently. What Ehrlich<sup>1</sup> says of the study of Jurisprudence appears to me to be equally true of the study

<sup>1</sup> *Soziologie des Rechts, Einleitung.*

of politics or economics. Jurisprudence has kept the immediate practical problems of western European law so closely in view, that it may well be compared with the kind of chemistry we should have had, had chemistry been pursued solely for the benefit of the pharmacist, or the kind of astronomy we should have had, if astronomy had been pursued solely for the benefit of the navigator. Mankind has ever been so anxious to understand and operate within some particular political constitution or particular system of law or system of exchange and production, that we have not achieved as yet theoretical categories of sufficient generality and abstractness to form a stable theoretical basis of social science—a basis capable of being extended and modified to bring in new phenomena as they occur, without being utterly overthrown and replaced. What de Tocqueville said of the complete lack of comprehension of the French Revolution among the theorists of that time holds good of the attitude of the western European theorist towards the economic revolution in Russia and the political revolutions in Italy and Germany; they are “mad experiments”, “hysterical tyrannies” and the like—in a word “sports”. It would at any rate be a better explanation to attribute them, as M. de Maistre did the French Revolution, to the direct intervention of Satan.

If Political Science is to make any progress at all, we must challenge this assertion, which is daily dinned into the British and American public from printed page, platform and loud-speaker, that Democracy is something “natural” and eternal, whereas any other form of government is transitory and perverse. But more than that, we must try to understand why this very dubious assertion should seem to so many excellent people something self-evident. In the first place, they often define Democracy in such a way that it seems a *sine qua non* of any tolerable government at all. But to use the term in such a sense

that practically any and every government must be labelled " democratic " is a debasing of the verbal coinage which will in the end make it fit for nothing. For instance, Mr. R. Bassett, in his recent admirable book *Essentials of Parliamentary Democracy*, objects rightly to many current definitions which make democracy consist in the social equality of all citizens. But the definition he offers : " a political method by which every citizen has the opportunity of *participating through discussion* in an attempt to reach *voluntary agreement* as to what shall be done *for the good of the community as a whole* " is evidently far too wide ; it applies to any decent government, and not least, in my judgment, to the modern dictatorships. I do not know of any dictatorship in which political discussion as such is forbidden or even frowned on ; in which the government does not believe itself to be acting for the common good ; or in which it does not attempt to reach voluntary agreement as far as possible. (As I shall try to show later, every government, faced as it is with the necessity of conserving the limited force at its disposal, tries to reach voluntary agreement as far as it can do so without endangering the fundamental purposes for which it exists.) In the above definition, which will serve our purpose as the typical definition of a convinced democrat, three conceptions are involved—" discussion ", " voluntary agreement ", and the " common good ". Of these the last, " common good " is so vague and has been so much misused by partisans that it would be safer not to use it until it has been subjected to careful analysis. But the other two, " Discussion " and " Voluntary Agreement " are plainly matters *of degree*, and as Aristotle said, it is with regard to the " how ? " and the " how much ? " that men differ :

Obviously no government can function at all if all its actions have to be approved by every citizen in the community. . . . Indeed, in the complex conditions of the modern world it is more

difficult than ever before to secure voluntary agreement even among a majority of the community.<sup>1</sup>

To go *too far* in the attempt to secure voluntary agreement means in effect a dictatorship of a few obstructionists. The *liberum veto* of every noble under the old Polish constitution will always be the classical example of this. But many serious observers of all parties are aware of the danger that modern democracies may go *too far* in trying to secure the voluntary agreement of every vested interest to every proposed reform. On the most charitable view of human nature, it cannot be thought that all mankind are all the time reasonable and responsible creatures, and the power for destruction of the irresponsible is always great. "Any fool can blow up the Parthenon," it has been said, "but it takes an Ictinus to build it up again." It is on this fact that we base the sacred duty of every government—even of every good citizen—to use coercive force, when occasion demands it.

It may well be granted that considerable Freedom of Political Discussion is a *sine qua non* of a healthy state, at least of one in which the citizens have reached a high level of education. But no democrat in his heart of hearts really believes in *unlimited* freedom of public discussion, and some are honest enough to admit the fact openly. Mr. Bassett admits—rightly in my judgement—one exception : free speech by "avowed opponents of democracy" which utilizes "the democratic machinery for the purpose of overthrowing democracy" must not be tolerated. An anti-democratic party, he thinks, should be deprived of representation in Parliament, though its speakers may be allowed publicity outside Parliament as an "act of grace".<sup>2</sup> (It would certainly be hard to decide in practice how far such persons are "utilizing democratic machinery", and are consequently to be suppressed.) Hardly any democrat proposes to allow freedom to incite

<sup>1</sup> R. Bassett : *op. cit.*, p. 115.

<sup>2</sup> *Ibid.*, p. 248.

people to armed revolt. Most democrats would suppress public discussions of a kind which they consider subversive of public morality, such as the public advocacy of free love or atheism<sup>1</sup>; though many of these would take cover behind the thoroughly dishonest plea that the publication of these doctrines is likely to cause popular disturbances and is suppressed on this ground alone.<sup>2</sup>

A cynical anti-democrat might define democracy as the form of government in which voting takes the place of discussion.

The fact is that there are "fundamentals" which any tolerable government must defend with all the resources at its command. Mr. Bassett has drawn attention to some of these. They derive from the purposes, some conscious, some unconscious, which lead men to set up and tolerate governments. A certain measure of free speech and free association is one such "fundamental". It is alleged that all non-democratic governments treat their adult citizens as if they were children; certainly the great mass of the citizens of the dictatorially-governed states would repudiate the suggestion. I do not think that any government that treated adults as if they were children could survive for long. But freedom is *only one* of these fundamentals. Order—regularity and reliability of social co-operation is another; we should not be content for instance if we had unlimited freedom of speech, but our letters seldom reached their destination. Another is the maintenance of a known and tolerably stable Law, within the four corners of which we can plan our lives. Another is the preservation of a certain degree of common Ethos

<sup>1</sup> And again, liberal-democracies punish libellous statements with extraordinary rigour, even where these are true, are made in good faith, and are in the public interest.

<sup>2</sup> My personal belief is that, as soon as Law and custom permit any individual to publish anything whatever, men draw the conclusion that truth and decency are matters of no importance.

—common beliefs about right conduct. Another is the encouragement of capable leaders to come forward in every department of life, and the establishment of mutual confidence between leaders and led. Any one of these fundamentals, if pursued exclusively, can be achieved at the cost of the others. Democracy, or rather Liberalism, stands up for the eternal value of free and frank public discussion, the duty of every man to contribute some idea, some conviction of his own to the common stock ; this is its glory. It is often the only fundamental which democrats can glimpse—"Let there be absolutely free and unimpeded public discussion of everything, though the heavens fall" !

The authoritarian states have their fundamentals too. They conceive that the public discussion of some topics and the ventilation of some opinions are so dangerous to the rule of Law, or to the common ethos, or to the mutual confidence between different sections of their people that they have discouraged and even penalized the public expression of these opinions. Public discussion is welcome, but only within these limits. The governments of these states, and the parties or "movements" on which they depend, are most sincerely convinced that these limitations are necessary for preserving the fundamentals of social co-operation. They may be wrong, but they justify themselves by pointing to certain failures and shortcomings of the democratic states, to waste of national resources, to the decay of the sense of social justice, to growing embitterment between groups and classes.

Many of its advocates praise democracy as a way of life, desirable in itself whatever its practical inconveniences may be. Most look on it as a political *method*—as merely the most convenient, or least inconvenient, means of securing the ends for which men associate in states. This is the view which has come to prevail, in the disillusionment of recent years. But if democracy is merely



a political method that has often been found expedient, its advocates should examine it in a scientific spirit, and not lay claim to a monopoly of justice and tolerance.

Now, wide freedom of public discussion is of great importance for the satisfactory working of this method, but is not of its essence. The essence of the democratic method seems to be that *very many leaders have to be chosen, and very many important decisions taken, by a majority vote of large bodies of people*. A large body may be considered to be one in which the proceedings must take the form of speeches rather than discussion. I do not know whether this definition is watertight ; it might well include many governments which have commonly been labelled aristocracies, but it seems to me to bring out the essence of the democratic method. "Government *by* the people", says Dr. Ivor Jennings,<sup>1</sup> "has in all countries proved to be a myth"; the question at issue is between different methods of government *for* the people; only reflection upon experience can determine how far each method is appropriate.

We in England have inherited a constitution which in many respects provides a happy combination of democratic and undemocratic methods. But changes in our "constitution" are so much a matter of very gradual change of practice. If we allow the balance of the democratic and the undemocratic elements to be altered, let us do it with our eyes open.

There is another sense in which "democracy" is commonly but wrongly used. A government which consciously aims at promoting the welfare of all its subjects is said to be democratic, and is opposed to one which considers its own interests only, or those of one section only of its subjects. But clearly a will to promote the good of all its subjects is compatible with the most various

<sup>1</sup> *Parliamentary Reform*, p. 17. Italics mine.

political methods, ranging from the most dictatorial to the most democratic. For the sake of clarity, we shall use the term "Popular Government" for one which feels and acknowledges a responsibility for the welfare of all its subjects.

If Democracy is a political method, Liberalism, in the sense in which it is used by anti-democratic theorists to-day, is an ethical theory; secondarily, a political practice based on this theory. The theory is hard to state fairly, perhaps because it is a hybrid. It has a negative aspect, derived from Lockian Whiggism; the individual has certain indefeasible natural rights as against the state; state action is permissible only in so far forth as is necessary to protect the life, liberty and property of the individual.<sup>1</sup> But it also has a positive aspect derived from Benthamite Radicalism; the sole purpose of any action is to increase the total happiness of the individuals composing it, conceived as a sum "each to count for one and no one for more than one". Taking the two aspects together, we might say that according to this theory, the only test of state policy is whether or not it produces widespread feelings of happiness in individuals; every individual's feelings are to be of equal importance; certain sources of happy feelings, such as free speech and free exchange, loom so large in the individual's budget of happiness, that the state must on no account tamper with them.

Liberalism is an ethical theory; it can only be attacked or defended by appeal to men's sense of value—of what is ultimately worth while. The Benthamites realized this when they called themselves "*Philosophical Radicals*". Liberalism is a question of principle. Democracy a question of expediency. The adoption of the democratic method does not necessarily imply

<sup>1</sup> Locke : *Second Essay of Civil Government*, Chap. IX.

acceptance of the Liberal philosophy. The kind of state which Rousseau advocated in his misnamed "Social Contract" was on the whole democratic but anti-liberal. Acceptance of the Liberal philosophy does certainly tend to favour a belief in the superiority of the democratic method, but a divorce of the two is thinkable; perhaps J. S. Mill might be cited as a theorist who accepted wholeheartedly the Liberal philosophy while expressing grave doubts as to the universal applicability of the democratic method.

The opposite of Democratic Government is Authoritarian Government. Of this there are various species; characteristic of them all is the feature that important decisions are taken by one or a few. The opposite of Popular Government is Independent Government; it too has various species, such as divine-right monarchy, tyranny, oligarchy; characteristic of these is the feature that the governors do not acknowledge any responsibility except to themselves or a few of their subjects—they rule avowedly in their own interest only. The opposite of Liberalism is Aristocracy, of which there are many species; characteristic of them all is the conviction of the government that different human types differ in worth, and ought to be accorded different rights.

The former two classifications belong to the politico-legal sphere, the latter to the ethical.

Nevertheless, though distinct in conception, these forms are not unconnected in practice. For a society in which the liberal view of life prevails will tend to have a democratic government. A popular government is not necessarily democratic or liberal, but an independent government is almost bound to be authoritarian. Aristocratic government is scarcely possible except where the governors have been trained by a group accustomed to rule; thus, aristocratic government normally arises out

of independent government by the leaders of a group that has seized power by conquest or usurpation—perhaps this is the only way in which a sense for aristocracy can be regenerated when once it is lost.<sup>1</sup> Thus aristocratic government tends to be authoritarian, though there have been famous examples to the contrary (Iceland, Poland).

Finally a personal note. When I went back to Germany in 1922, in the heyday of Wilsonism, I was completely taken aback to find most educated people expressing grave doubts and apprehensions as to the democratic government which was then being introduced. People who had no reason to love the imperial system which had passed away were nevertheless of the opinion that democracy would prove to be government by the corrupt and the incapable. At that time it never occurred to me that anyone in his heart of hearts could genuinely doubt that democracy was the only true form of government; I thought that these were simply people whose fear of losing present advantages and privileges had warped their judgement. Nearly six years spent in Germany at a formative time of my life convinced me that I was wrong. To-day the two halves of Europe speak two different political languages, and there is not the slightest chance of their understanding one another, unless we begin to think more clearly upon the meaning of government, of democracy and of liberalism. There is much that we can heartily detest in the new revolutionary dictatorships; but we must realize that democracy is only one method of government among others, and that it has no monopoly of the virtues of tolerance, progressiveness, public spirit or incorruptibility. There have been undemocratic governments which have possessed these virtues in a high degree, and democracies in which they were conspicuously absent.<sup>2</sup>

<sup>1</sup> See below, Chap. XII.

<sup>2</sup> See below, p. 192 f.

## CHAPTER II

### LIBERAL-DEMOCRATIC ECONOMICS

Not to have to deceive and disappoint people—this, I think, is the chief advantage of having some property.

PLATO

**L**IBERAL-DEMOCRACY has failed to achieve an adequate theory of the nature of government, largely because of the false separation it has made between politics and economics. It has elaborated with wonderful refinement and subtlety an economic theory, which is based on very special and not very realistic political assumptions. Then it has ignored these assumptions, treated the economic theory so deduced as "natural" and as if it were a description of the real facts; and finally has claimed to draw from it conclusions as to the "natural" form of political organization.

According to this type of economic theory, the state consists of a number of individuals, each pursuing his own individual interest exclusively. (It is usually admitted that this is an abstraction, but alleged that it is an abstraction which any economic theory is bound to make.) The law effectually prevents individuals from employing force, though it provides them with policemen for the protection of their property and bailiffs for the enforcement of their contracts. Consequently the individuals' pursuit of their own interests takes the form of the competitive struggle. In this struggle the positions of the different competitors are registered from time to time, in the "free contracts" which they conclude with one

another, and which are enforced by law. Success in the competitive struggle depends primarily on the successful use of this legal instrument of the contract.

According to this theory, the divorce between politics and economics is complete. The political assumption is, that all the citizens will the competitive struggle to go on on these terms, and merely disagree as to which of two or more sets of umpires (governments) should keep the ring. There is, however, strange to say, universal agreement that the umpires shall be elected from time to time by a simple majority vote of all citizens, in which each is to count for one and no one for more than one. It is considered that this is the only condition necessary to ensure that the law, e.g. the law of property and contract, will be neutral and impartial as between the competitors.

This account of liberal-democrat economics is admittedly a caricature, drawn in order to emphasize its salient political assumptions. What remarkable assumptions they are! The essence of the whole theory is that the whole competitive struggle shall take place in terms of the legal device of "free contract", and that there shall be a state organization, *powerful but limited in its scope*, to enforce these contracts. Contract is to be the only bridge between the egoism of the individuals. Moreover, "contract for a consideration"—no promise made out of mere good-will towards the promisee—is to be the only form recognized by the English state, the home of liberal-democracy.

In a world in which every individual struggled all the time for his own gain, "cutting his losses" and relying on his own powers for the future, Interest-groups would have no permanence or stability; nor, I think, could any Ethos, any standards of conduct felt to be obligatory, get generally accepted, except perhaps the obligation to keep promises. This obligation, as we know, holds a unique place in all liberal theories of ethics; it is alleged to be the only "natural" obligation, which man universally feels.

“ Keeping of faith belongs to men as men, and not as members of society ” (Locke).

The facts give quite a different picture. At every turn every competitor finds himself, owing to the legal and social system, in a certain position of relative advantage or disadvantage. He may be a landlord, who owing to the legal protection given to his kind of property has made very favourable contracts with his tenants ; he may be a scientific inventor, who owing to inadequate legal protection given to his kind of property, has made very unfavourable contracts with the manufacturers of his invention. In any case he wants to improve or maintain his bargaining position for future contracts, to eliminate elements of disadvantage or to conserve elements of advantage. He *does not necessarily* feel any ethical obligation to carry out contracts which he may feel to have been forced on him owing to the superior legal bargaining position of the other party. His position in the competitive struggle tends to create an *Interest-group* of persons in a similar position, at first unorganized, later perhaps organized. He may attempt to improve or conserve his position by means that are *political* as well as economic, for instance by forming a Landowners' Defence Association, or agitating for state subsidies to inventors.

Modern subjectivist economics—which, in spite of all denials, is based on the individualistic philosophy of liberalism—ignores the fact that the bargaining power of two “ freely contracting ” individuals depends on the legal and political system and is never equal ; it ignores the fact that individuals, so far as they are rational, consider what effect each contract will have on their whole standard of living ; and finally it ignores the fact that the individuals, so far as they are rational, always have an eye to their expected future bargaining position. In addition of course it is far too rationalistic—it ignores the existence of “ sympathetic ” Interest-groups, such as the family and

the neighbourhood, which are based, not on a calculation of mutual advantage, but on a feeling of belonging together. Or, in so far as it does take account of these facts, it underestimates their importance.<sup>1</sup>

It might be thought that the device of Money enables a man to secure all his various interests at once; that a man need only aim at getting as much money as possible, and this will secure the satisfaction of his different interests and insure him a satisfactory bargaining position in the future. But this is only true to a limited extent. Man knows he is a creature of recurring and changing needs. His "standard of living" means the degree to which he normally expects to be able to satisfy them *all*, and they are not interchangeable to any great extent. Workers for example will not be prepared to enter into an agreement with an employer which secures them very favourable wages but at the cost of very long hours for a long time to come. Man is conscious of having enduring interests. An "interest" may provisionally be defined as "an expectation of recurring wants for a type or group of satisfactions", e.g. an interest in cricket, an interest in a health insurance scheme. Again, a man's interests change with his age and circumstances, a fact which is of great importance for economic analysis.

Money is a device for finding a common denominator for those needs which can be satisfied by others, through exchange on the market. In theory, £1 guarantees its possessor a certain anticipated quantity of food *or* clothes *or* leisure *or* knowledge, whenever he chooses to spend it. In actual fact, the satisfaction he will get from it depends on the bargaining situation he happens to be in when he comes to spend it.<sup>2</sup> A man who is healthy or who has acquired certain agreeable kinds of skill will have much

<sup>1</sup> But see Note on p. 23.

<sup>2</sup> Even when the value of the money is kept stable—see below, p. 69 f.



more satisfaction from his £1 than one who is unhealthy or without skill. Similarly, a "producer", such as an operatic singer or a clergyman, will have much more satisfaction from expenditure of a unit of "labour" in a society in which these kinds of labour happen to be valued than in one in which they have come to be valueless. (I mean valueless, not because the market for them happens to be overstocked, but because the cultural and political ordering of society, and with it the conditions of demand, has radically changed.) There are many interests, the satisfaction of which cannot be bought at all.

Other interests can be expressed in terms of money, but this manner of expressing them is highly misleading. The clergy of a country presumably have a common interest that the people of that country should be religious and devoted to the observances of the Church. Increased devotion to the Church will normally show itself in increased offerings and an increased demand for the services of the clergy; yet we should not conclude that this is all that the clergy as a group desire. Besides which, it is quite thinkable that the income of the clergy might be going up—let us say, owing to increasing prosperity in the country, and yet the Clerical Interest—the devotion of the people to the Church—be going down.

It is a commonplace of social history that at one epoch or in one country "the landed Interest",<sup>1</sup> in another the "manufacturing Interest", in another the "commercial" or "financial Interest", in another the "military" or "bureaucratic" or "clerical Interest" has predominated. Consider the case of England at the beginning of the nineteenth century. At that time there was a body of persons in the country interested in maintaining certain social institutions which gave political power and economic bargaining advantage to the owners

<sup>1</sup> "Interest" is here used in a sociological, "interest" in a psychological sense.

of land. This was however for a long time an unorganized Interest. (In fact, the term landed Interest probably only arose when some individuals among the landlords perceived that their common source of gain and way of life was threatened.) Now landlords *as a body* undoubtedly enriched themselves in the industrial revolution by playing into the hands of the industrialists—by raking in their royalties, their increased site values and their increased food prices; but they undoubtedly undermined their position of predominance *as a body*.<sup>1</sup> Only a dogmatic determinist could assert that this development was inevitable. Had individual landlords been willing in time to subordinate their individual desire for gain to maintaining their interest as a group, had they found better leadership and firmer organisation, then they would undoubtedly have had the power, economic and political, to prevent that growth of manufactures, population and foreign commerce which ultimately broke their power as the predominant Interest-group in the state.

In fact, individual desire for gain is not irresistible and not the only motive in economic transactions; it is frequently subordinated to an interest in maintaining a certain source of gain, or a certain way of life which seems to depend on that source of gain. The whole existence of the Trade Union movement, for example, depends on *frequent* subordination of the individual worker's desire for gain to his will to maintain the solidarity of the "working-class" as an Interest-group. That individuals do business exclusively for themselves, but vote simply with an eye to the good of the state—these are the two false assumptions of the current economic and political theory.<sup>2</sup>

Everywhere economic life takes place within a political

<sup>1</sup> An interesting present-day example is to be found in Palestine, where the Arabs are said to be gaining economically and losing politically through the influx of the Jews.

<sup>2</sup> One symptom of this is the present unhappy position of the theory of Public Finance. All books on the subject—at least all

framework, and the individual's desire to get the greatest possible satisfaction out of scarce resources is subject to his interest in maintaining the power, status and prestige of the various groups with which he associates himself. The particular rules of the game which obtain at any given time—"free contract", "capitalism", "slavery" and the like—are due to the varying cohesion of the various groups. It is a commonplace that conditions of demand and conditions of supply are intimately linked; that materials and labour which are relatively scarce in one ordering of society may be relatively abundant in another ordering; it is for instance out of the question for us to be able to build pyramids, as the ancient Egyptian kings did, owing to the utterly different distribution of purchasing power in a modern society. "Scarcity" is always relative to some given distribution of purchasing power. Thus the introduction of Prohibition into the U.S.A.—a political change—made a whole number of commodities and kinds of labour "scarcer" and others "more abundant". What do we know of the nature of these changes from one "ordering" to another? Equilibrium economics has very little to say on this point. Marxian theory attributes all change to the accumulation of surplus value in the hands of a different class owning the means of production. But this is far too simple, if only because of the varying meanings of "class" and "ownership". However, we may say that behind the price of every service and the utility of each unit of purchasing power lie the "conditions of supply and demand"; these conditions of supply and demand are in part due to the physical environment—fertility of the soil and the like—but still more to the political cohesion and cultural influence of the different Interest-groups.

Liberal-democratic Economics are an abstraction—known to me—are based on the notion of objective "welfare" or "social utility", conceived as a measurable quantity, although in other departments of economic theory that notion was long ago abandoned as untenable.

though perhaps a useful abstraction. They consider mankind as a mass of individuals pursuing their own wealth without any conscious leadership or subordination, and none the less arriving at a considerable degree of satisfaction. In the case of the “ entrepreneur ”, leadership of a kind shows itself, but shamefacedly ; the entrepreneur is not to aim consciously at getting the best out of those he organizes, he is to aim at his own enrichment. However, the quality of “ enterprise ” in the economic sense may well be a sign of capacity for leadership in the political sense. It is necessary that there should be a considerable sphere of unregulated “ economic ” activity, in order to try out the capacities of men. Economics depicts mankind *in search of Law and Leadership*.

The peculiar sphere of government is that of social invention. The social inventions, e.g. of trading in shares, of health insurance, of daylight saving, of the building society, have influenced our lives as much as the technical inventions of telephones and aeroplanes. Seldom does any particular individual stand to gain much by the introduction of such social inventions, which make the co-operation of everybody more fruitful. The entrepreneur is always making social inventions, but accidentally, and their application generally depends on the co-operation of the legislator. Deliberately to make and introduce social inventions is the business of the political leader as such.

## GENERAL NOTE ON CHAPTER II <sup>1</sup>

What I have said in this last chapter would of course be ludicrously unfair as a general account of modern economic theory. I have merely aimed to show why this theory often seems unrealistic, and unhelpful in furthering our understanding of politics.

<sup>1</sup> This note presupposes some acquaintance with economic literature.

In spite of all denials, I do not believe that economics has sloughed off the skin of the individualistic, hedonistic philosophy in which it was born. It treats man as an individual distracted by desire for a variety of satisfactions, and striving to achieve the maximum satisfaction possible to him along all these various lines. But the desire to maintain one's standards of right and wrong is not one "end" among many, which increases and decreases in "relative significance". It is a different thing altogether. So is, in my judgement, the desire for what Mr. Keynes calls "Liquidity" <sup>1</sup>; this is the individual's will to maintain or increase his freedom of action for the future, and seems to be a function of the individual's temperament and of the social order—not to depend much on his estimation of the particular satisfactions on which he will spend his liquid resources in the future. This is because the will to power—of which the will to freedom is one aspect—is *sui generis*, and on a different psychological plane from all desires for particular satisfactions, whether present or expected.<sup>2</sup>

Within the last ten years or so the view of economic theorists as to the scope of their science has considerably changed. It used to be defined as the science of Wealth, and was considered to deal with the provision of the more "material" satisfactions only. Now, I suppose, the view generally held, at least in England, is that formulated by Professor Robbins; we are to regard economics as the science of the rational disposal of scarce means, that have alternative uses, for the achievement of any ends whatsoever—so that there may be an economics of physical strength or an economics of salvation.<sup>3</sup> None the less, economists

<sup>1</sup> J. M. Keynes : *General Theory of Money, Interest and Employment*.

<sup>2</sup> Irving Fisher recognizes this in his *Theory of Interest*. His concept of "Preference for a certain Income-Shape" seems to me to play havoc with the old economics.

<sup>3</sup> L. Robbins : *Nature and Significance of Economic Science*, Chaps. I and II.

in practice restrict themselves just as much as ever to problems of the production, exchange and distribution of the "material" sources of satisfaction—the reason being, that only in this field are the philosophical presuppositions of economics plausible. When I am considering whether to spend a shilling—or an hour's labour—on cinemas, or clothes, or food or books, it is plausible to treat these as competing or complementary ends or "utilities", all on the same psychological plane, and all capable of being measured against one another. It is not plausible to treat, for example, self-respect or freedom in this way, simply as competing sources of satisfaction among others.

To explain why this is so would require a somewhat lengthy psychological investigation; here we can merely point out—what everybody feels—that they are on a different psychological level from the particular satisfactions. In fact, they signify, not different satisfactions, but different degrees of rationality in our choice between satisfactions. Unfortunately few economists seem to have asked themselves why men *should* choose rationally, and why different men prefer such different degrees of rationality—in other words, why some are "economical" while others are "happy-go-lucky" and *have no wish to be anything else*. Orthodox theory must say that the "happy-go-lucky" man is *just as* rational and economical as the typical business man, only that his taste in pleasures happens to be different. But is this view really plausible?

Now economists in their Theory of Capital do certainly consider the effect of a man's estimate of the future upon his present behaviour. In their Theory of Oligopoly<sup>1</sup>, they do certainly allow his action to be affected by the way he expects his neighbours to react to it. But throughout they consider the individual as ultimately determined by the desire for the maximum quantity of satisfactions,

<sup>1</sup> That is, the theory of a market in which there are only a very few sellers.

neglecting other motives which are different in kind, such as the desire to maintain standards of conduct (ethos) or the desire to control and influence others. But the desire to control others—the political motive par excellence—is largely opposed in practice to the enjoyment of maximum satisfaction oneself; so that it is misleading to treat such control as merely one source of satisfaction among others; and the same is true of the desire to do what we believe to be right—the ethical motive. The “last end” of man, in the view of the economists, may not unfairly be defined as *Maximum Consumption* in the long run. The word “Consumption” is not ambiguous in the way that “Satisfaction” is, for e.g. the desire for power gives satisfaction, but it is in no way a kind of consumption.

Economic theory has hitherto been *Monistic*; it has assumed that all human action could be explained by means of a single principle, viz. the desire to get the greatest possible amount of satisfaction by allotting scarce means to various alternative ends. This is considered to be the sole organizing principle of human activity. But what if there should be *several* organizing principles, capable of conflicting with one another? Suppose, for example, that the urge towards maximum individual satisfaction is found to conflict with an urge towards the preservation of the species? <sup>1</sup> Action which was rational from one point of view might then appear irrational from the other point of view. We should then need a *Pluralistic* economics; and it seems to me that this is what Mr. Keynes is tending to, in postulating as fundamental a Preference for Liquidity as well as a Propensity to Consume. In my view, besides the propensity to consume, the will-to-power of the individual and the will to maintain a specific ethos are organising principles.

<sup>1</sup> As seems to be the view of Freud in his later work; cf. S. Freud: *Jenseits des Lustprinzips*.

There arises then the question where the border-line is to be drawn between Economics and Politics, a question which cannot be answered in the present book. All we can say is that Economics mainly considers man as willing to obtain a certain kind of power only, viz. the power to consume, and one form of this especially, viz. purchasing power. By an abstraction, it treats man as desiring this kind of power only, and as desiring other kinds of power, e.g. the power of the propagandist or of the manager, *only for the sake of this*. Constantly, e.g. in Monopoly Theory and in Public Finance, Economics impinges upon the sphere of Politics; and the same facts, e.g. the organization of a business, can be studied either from an economic or from a political point of view. The equilibrium which economics studies is part of a wider power-equilibrium,<sup>1</sup> and often it is misleading to treat either the economic or the political equilibrium in abstraction from the other. Economic power may be obtained simply for the sake of political power, and vice versa. Only Marxian economics has seriously attempted to link up the equilibrium of economic power with the equilibrium of political power, and to demonstrate the transformations of the one into the other.

I do not say that the orthodox economists have altogether ignored the existence of legal and political institutions, or that they have supposed these to remain for ever constant. But on the whole they have treated them as mere data, on a par let us say with climate, whereas in fact they are continually effecting, and affected by, changes in the economic equilibrium. Of late years economists have recognized this fact in the one case of the legal and political device of Money. It is now fairly well recognized that a new invention, a bad harvest, or a change in people's desire to save will work itself out differently according to the way in which the monetary system is manipulated, which in

<sup>1</sup> And also of an ethical equilibrium—see below, p. 149.



turn depends on the organization of various groups and their political power. Again, in considering monopoly-theory or wage-theory, the possibility of economic changes bringing about political changes is sometimes envisaged. Economists are good enough to tell us that after a certain change in the political data, e.g. the imposition of import duties, the economic system will return to a certain new equilibrium, *provided no further changes occur*. But what if, owing to the consequent changes in political power, a whole sequence of further changes in the political data is inevitable? To the practical politician, who can often foresee this sequence, the pure economic theory will then appear unrealistic and unhelpful. If, owing to a new invention the bargaining power of a certain group of workers, e.g. coal-miners, is weakened, they may be forced to accept reduced wages or unemployment; but on the other hand, they may be in a position to secure a state subsidy or tariff protection, and so change the conditions of demand for their product. And it is often possible to foresee, as the result of a sociological analysis, which of the two alternatives will be realized. One more example: it is generally believed that the state would step in to secure depositors in the event of one of the big joint-stock banks failing, and in consequence of this it seems plausible to treat their deposits as Money; if we had a vast number of small and weak banks, for whose stability the government felt no concern, this view would seem unplausible in the extreme.

In conclusion, the relationship between economic and political power may be somewhat analogous to that obtaining between mechanical and chemical forms of energy. There are many problems which can be solved solely in terms of the one or the other; there are some, however, which cannot be realistically solved without taking account of the transitions from the one form of power to the other.

## CHAPTER III

### THE STATE AND OTHER GROUPS

“Who wants to rule nowadays? Who wants to serve? Both are far too much trouble.”

NIETZSCHE : *The Latter-Day Men*

ALL political theories which purport to be simply theories of the state, which suppose that the state is something unique and *sui generis*, and confine their attention to it exclusively, are doomed to futility. Just as the word “state” is a late invention in the history of mankind—it seems to be first found at the end of the fifteenth century—so the organization which it signifies is a late and by no means universal achievement of mankind.<sup>1</sup> In Ancient Greece, the Roman Empire, the European Middle Ages there was nothing that could properly be called a state; there is not in present-day China. In the opinion of some <sup>2</sup> the state, which was the characteristic political form of eighteenth- and nineteenth-century Europe, is now in process of passing away.

Many modern theorists, beginning with Comte,<sup>3</sup> who recognized this fact, thought to do justice to it by prefacing their theory of the state with a theory of *society*. “Take away the state and society will remain; the laws of society are natural and eternal, the state is an association

<sup>1</sup> Cf. Foster : *Political Philosophy of Plato and Hegel*, Chap. I and passim.

<sup>2</sup> Heckel and others : *Lage u. Studium d. öffentlichen Rechts (Hamburg)* in *Deutscher Staat der Gegenwart*, Heft 12.

<sup>3</sup> The notion is certainly current before his time, and derives obviously from the eighteenth-century “state of nature”. Cf. Paine : *Rights of Man*, Chap. I.

for a specific purpose, artificial and transient",—this for instance is approximately the view of Professor MacIver. I shall try to show why I find this view unacceptable. The state is natural, in the sense in which Aristotle meant this expression; all social organization shows features which appear manifest in their highest degree in the state. These features are law, ethos, organized coercion, legitimate leadership. In a word, all social organization is "state-like" and involves government.

Aristotle's "Politics" was in the main a theory of government (*ἀρχή*)—of what he called "political government", though not without some reference to the other two types of government which he recognizes, under the names of "despotical" and "royal" government. Mediæval theory was in the main a theory of "Dominium". "The important question is: who rules whom?"<sup>1</sup> We English have at our command a greater stock of practical maxims of government than perhaps any other people, but we lack a systematic theory of government. A sound political theory must be a theory of *government in general*; though there is no reason why it should not concern itself primarily with state-government. Indeed, this would be the natural course of procedure for us twentieth-century Europeans, since it is in the state that we are most likely to see the facts of government "writ in large letters".

Liberal-democratic theory has always been excessively pre-occupied with the question: "how should men *set up* a government?" We are told that the only correct way of setting up a legitimate government is for some influential persons to convene a Constituent Assembly; for this Assembly to debate and promulgate a Constitution providing for a Representative Body to be elected; for the elected Representative Body to ratify the Constitution and give place to another Representative Body, which is thenceforward the sole source of sovereign authority—

<sup>1</sup> I believe this was a remark of Lenin's, but I cannot trace it.

and so on. It might be called a Theory of Democratic Legitimacy, and it inevitably gets involved in "general will" mystifications. To explain how *I* can in some way have willed what Mr. Ramsay Macdonald said in his last speech, when I do not pretend to understand what he meant—this is really inexplicable. How unreal the whole theory seems at the present day, when the great majority of governments are not legitimate!

The facts are, that some government will establish itself, whether the majority of the population have voted for it or not, and it may have to take account of *my* wishes, whether I am constitutionally enfranchized or not—for example, if I happen to be a banker, an influential mob-orator, or a policeman. The whole question of "legitimacy" is not unimportant, and I shall discuss it later, but it is an altogether subordinate question. The way in which a government uses its power is infinitely more important than the way it got into power.

What liberal-democrats forget is, that men cannot choose not to have government, any more than a child can choose not to have a father. Government is never a mere *agent* of the governed.<sup>1</sup> The unsophisticated mind of the young realizes this, and may express its feelings somewhat naïvely; a German schoolboy once said to the writer, complaining of the behaviour of a club official: "He had no business to punish me; I helped to elect him."

Government is in fact an Art, requiring knowledge, skill and will in the governor. It is based on the immanent purposes of human nature, as the art of the gardener is based on the immanent purposes of plant nature. There are of course important differences between the two arts, due to the facts that men can talk, and that the purposes of governor and subjects are akin in a way in which the purposes of the gardener and the plants are not; but still the similarities are important too.

<sup>1</sup> See below, Chap. XV.

We can find many indications that there is an element of technique or skill in government, and that this element is the same in democratic and in non-democratic governments, in state governments and in the management of clans, associations and other forms of community—so far as this is a government of adult human beings, and not merely a management of things. The universal usage of all peoples judges governments to be “good” or “bad”, and applies these terms to *all* forms of government. And the goodness or badness of government has nothing to do with the way in which it was set up; many governments that were not constituted according to the democratic recipe have been generally judged to be “good”. One of the oddest results of the democratic era in England is that the world’s greatest colonial power produced no theories of colonial government; with the exception of Mill’s last chapter,<sup>1</sup> and Cornwall Lewis’s *Government of Dependencies*, little attempt has been made to bring together the reflections of our administrators upon their work. We seem to have been ashamed of our Imperialism and have thought as little about it as possible. Yet we all agree that some colonial governments are relatively “good”, others relatively “bad”, and that *none* of them is democratic.

The democrat is often prepared to admit that governments can be more or less “efficient”, but he believes that this technical element of “efficiency” is concerned with the means of government only—roughly with what may be called the management of things—as, for example, the accounting of a Treasury or the water-supply of a city may be inefficient. The current theory is, that experts should propose the means, and the “people” or the “people’s representatives” the ends. But everyone who has studied

<sup>1</sup> *Representative Government*, Chap. XVIII. Of course, there is the work of Lugard and others on particular regions and particular problems.

the workings of government at all knows that the relationship between Ministers and Civil Servants, or between Local Government committees and their expert officers, is a far more subtle one than that. We know that if "representatives" persistently demand projects which "experts" regard as absurd, or if "experts" persistently fail to suggest improvements of which they alone can see the possibility, then the confidence between leader and subordinate, which is the basis of government, gradually breaks down. The fact is, that all good government comes from the co-operation of those who are more expert in a narrower field with those who are less expert in that field but whose expert knowledge is more extensive. Some one has said that expertise consists of getting to know more and more about less and less. The "technical" element in government is concerned not merely with the management of things, but with the management of men; an efficient government is not merely one which possesses capable experts in its various departments, but one in which different kinds and degrees of experts co-operate willingly and fruitfully.

Probably there is no art or craft in which the separation between means and ends imagined by the democratic theorist is possible; for instance, it is no good commanding a bridge of a certain span to be built of bricks if the nature of the material does not permit of it. The difference between the arts which deal with a lifeless and those which deal with a living material is, that in the case of the former the possibilities of the material "stay put", and can be known once and for all, whereas in living beings this is not the case. Living beings also are limited by the capacities of their species; but these capacities only show themselves in the course of time, and can only be known by long trial in varying environments. It is only through finding out what conditions a certain plant seems to "like", that we are enabled to modify its habits, and perhaps its outward

appearance, in accordance with our plans. The gardener's purposes must in some sense *include* the purposes of the various plants—the "will to live" of each after its specific kind; it is the gardener's own "will to live" that leads to a further revelation of the capacities of the plant-species. An omniscient God, who knew all the hereditary capacities of each species of plant and animal in the garden, would know what permutations and combinations of form were still possible; we have only the most imperfect insight into the necessities of hereditary specific form.<sup>1</sup> It is only because there are some beings, natural gardeners, with a "will to live" which can only find satisfaction through the trying-out of new combinations, new symbioses, that we discover the inner possibilities of the different species.

Let us apply this analogy to mankind. Everyone who has reflected on life at all must have been aware of the deep truth of the Greek maxim *γένοιτο οἷός ἐσθ*, "seek to become what you really are". It is in the sphere of instinctive unregulated "will-to-live" or "will-to-power" that the specific tastes and interests of men reveal themselves. In this sphere men reveal themselves whose nature is *synthetic*,<sup>2</sup> whose will-to-live finds its satisfaction in including and absorbing the purposes of the rest in their own purposes, and who are the born leaders and governors. It is their nature to discover how the purposes of other men may be fitted into one another and fitted in with their own purposes. As a matter of fact the sphere of life which we call "economic" is, as has often been pointed out, an

<sup>1</sup> *Vide infra*, Chap. XIII.

<sup>2</sup> From *θέλω* "to will"—"willing together". The philosopher is the man who is synoptic *par excellence*, the statesman synthetic. Plato did not sufficiently realize that the "forms" of living things have to be *elicited*, whence he advocated government by philosophers who would rule unwillingly. The eliciting of the native capacities of men, with a view to bringing about new kinds of concrescence, to use Whitehead's term, is an activity of those who have the native aptitude for it.

abstraction ; it is always penetrated and overlaid by the plans and institutions of men whose will-to-live is of this inclusive, synthelic kind, whose will-to-live is a will to organize, who will to have political power. We do not anywhere find an unorganized unregulated struggle of each man for himself, as the trees in the forest struggle for life, because everywhere there are men whose nature it is to create organized interest-groups, each with its specific ethos. We find all possible degrees of "political" regulation, from extreme laissez-faire to the highest degree of planned economy ; but never an economic system without a considerable political and legal framework. Consequently it is always possible that men who do not show gifts of leadership under a given political and legal system might do so under another. Change of circumstances will often show the true character, tastes and capacities of a man ; his conscious desires for himself at the moment may be quite a false indicator of his nature. I suppose Cromwell was the most remarkable instance of this.

Here we come upon another principal defect of the current democratic theory—its over-estimation of the importance of *conscious* expressions of opinion, at a voting for example. Government might provisionally be defined as the technique of rendering mutually useful to one another a number of living beings whose immanent purposes or interests are *partly-conscious*. In consequence of this, their expressed desires are important as an indicator of their interests, but not all-important.

The only outward criterion of good government is success. Success or failure is in the long run apparent to all ; in the short run it may be obscured from all save the practised observer, owing to luck or other circumstances. Some indications of success are : increase in the numbers and physical and mental quality of the people, increase in their prestige and influence in foreign countries, increase in their natural resources, increase in the harmonious



co-operation between classes and groups without loss of variety, initiative and enterprise. No such rough-and-ready method as a single mass vote is adequate to decide whether a government has outlived its usefulness or not.

Success consists in stimulating, failure in throttling, the hidden springs of exuberant life. Every administrator, every educator knows that such vitality is not the product of a mere freedom from external restraints. The human spirit, like the aeroplane, can only soar in face of sufficient resistance. And planning of men is far more important than planning of things.

## CHAPTER IV

### THE AIMS AND METHOD OF POLITICAL THEORIZING

“Will for Truth”—is that how you call the thing that impels and inflames you, ye wise men? Will that all existence shall become thinkable—that is how I name your will! All Being to be made thinkable, to bend and bow itself, to be smoothed out and subjected to Spirit, as its very mirror and manifestation—that is the sum of your will, ye wise men—of your Will to Power.

NIETZSCHE

THE aim of Political Theory should be to make political events intelligible as they occur; so far as possible, to predict their occurrence in advance; and to furnish the practical politician with an account of universal tendencies of human nature which show themselves in the sphere of political institutions. This account must be drawn from analysis of recorded past experience. It should not be an exposition of the personal ideals of the theorist, though of course it is *his* analysis, *his* judgment as to what is essential and what is trivial.

What are the conditions that determine the willingness of men to associate and co-operate, to command and obey? These are phenomena that present a problem which is worth trying to understand in general terms; it is worth while trying to find a system of concepts which can be progressively built upon in order to interpret each social or political event as it arises. And if the universe is rational in the sense of being adapted to be grasped by our systems of concepts, we need not suppose the problem insoluble. It is necessary to try to found political theory, as Aristotle did in his day, upon an examination of the

most abstract and fundamental types of human relationship. For Aristotle, the city-state is that which consists of husbands and wives, parents and children, masters and slaves, rulers and subjects; and he sets out to explain political life in terms of the immanent purposes, or interests, which cause men to enter into these relationships (*κοινωνίαι*). But he did not carry out his programme very rigorously; and later political theory, with its notions of contract and sovereignty, was almost exclusively concerned with a special question, viz. the question why men feel an obligation to obey the law as such—to answer this question, it invented the notions of “social contract” and “general will”. Now for a theory to be stable and capable of expansion, its concepts must be clear, applicable to the greatest possible diversity of phenomena, and above all must refrain from postulating entities which are inaccessible to experience. Such concepts as “general will” and “group mind” are far from clear; it is by no means obvious that any such entities exist.

A serious political science should be guided as far as possible by the same principles which guide theorizing in any other science.<sup>1</sup> These principles require in my view that it must be Individualistic and it must be Rationalistic.

It must be *individualistic* because the only kind of regularity which we *understand* in human affairs is regularity of individual motivation. By statistical methods we can discover that certain regularities recur, without seeing why; we can only interpret them through our knowledge of individual motivation. We know that certain conditions determine (or “incline”) a human being to act in certain ways, and we feel that such knowledge makes much human action intelligible and to some extent predictable. The system of laws of human motivation may be hard to discover; there may be an element of

<sup>1</sup> J. M. Keynes has well analysed these in his *Treatise on Probability*.

the absolutely unforeseeable in human behaviour; but that there are intelligible regularities, the existence of detective stories bears witness. The only events in which we can find intelligible regularities are the actions of individuals; we understand nothing of the motivation of "general wills" or "group minds".<sup>1</sup>

Political Theory must be *rationalistic*, in the sense that it must not merely enumerate regularities, but explain the less intelligible in terms of the more intelligible. Thus in investigating the legal practices of the Anglo-Saxons or the political arrangements of the Malays, however unreasonable these may seem to us, we should try to find the (to us) distorted or perverted "reasons" which led to their being adopted. Above all, the unconscious and instinctive should be explained in terms of the conscious and intentional,—not vice versa, according to the vicious practice which is becoming more and more prevalent. The discovery of the unconscious and instinctive as also in a sense intelligible, as a sub-type of intelligible behaviour, was a great advance; but the explanation of perfectly intelligible conscious human action by reference to some form of animal behaviour is no explanation, but an obscuration. Where for example workers purport to be following the instructions of a union leader for the sake of

<sup>1</sup> Max Weber, in *Wirtschaft und Gesellschaft*, also in *Aufsätze zur Wissenschaftslehre*, has well analysed the different kinds of "intelligibility" in human action. No doubt this depends in the last resort on the hierarchy of values in a man's make-up, or, in other language, on the structure of instincts, sentiments and temperament, with its racial, national, sexual and individual variations. But without having any systematic psychological theories, we can understand and predict much of human behaviour, e.g. for the purpose of estimating what commodities can probably be sold in what quantities at what price.

Max Weber's analysis of intelligible action as either *zweckrational*, *wertrational*, *affektuell* or *traditional* seems to me to be of fundamental importance. It is deplorable that it should not be available in English. For a slight sketch, see W. Brock, *Contemporary German Philosophy*.

the advantages which they expect to get from the strike *which he is directing*, it is no explanation to say that their obedience is really due to suppressed libido which has been "transferred" to him. Only where the conscious, *prima facie* motive seems plainly *insufficient* to account for the behaviour should we look to the unconscious.

## CHAPTER V

### THE FUNDAMENTAL SOCIAL RELATIONSHIPS

Παλίντονος ἁρμονίη κόσμου ὅκωσπερ λύρης καὶ τόξου

The World-order is a harmony of opposing tensions, as in the lyre and the bow.

HERACLITUS

OF all theories of social and political life, which conform to our criteria of being rationalist and individualist, that of Bentham is the most grandiose. His was an attempt to describe all human action in terms of the relatively simple concepts of the Hedonistic Calculus. Unfortunately this attempt had one great defect; it neglected man's overmastering desire to make himself independent of time and change. Man seeks, not merely the greatest sum of pleasures, but also the maximum security that his recurrent wants, whether intellectual or physical, will be satisfied whenever they recur.<sup>1</sup> This is why we need the concept of "interest" for such recurrent sets of wants associated with a permanent source of satisfaction. But it is not possible for man to count on the *regular* satisfaction of wants apart from social co-operation; the concept of "interest" is altogether relative to a social environment, as that of "instinct" is relative to a physical environment. Just as biological instinct could not show itself unless certain types of stimulus recurred in the

<sup>1</sup> Bentham considered that the factor of Certainty or Uncertainty could be evaluated in terms of pleasure—that we ought to reckon one bird in the hand as worth precisely two birds in the bush. Cf. Bentham: *Principles of Morals and Legislation*, Chap. IV. This view has been considered in the foregoing General Note.

physical environment, so "interests" could not show themselves unless the individual could count on certain tendencies to co-operate in the social environment. The individual consciously sets himself far-reaching aims, counting on the regular co-operation or at least the regular non-interference of other individuals. Every man who has got beyond the stage of "living for the day"—the condition of child, primitive savage and mentally deficient—forms a conception of what is and what is not for his interest. Such conceptions are formed by bringing his wants into relation with his estimate of what is likely to happen in the future. They are not deduced from a conception of his "good"; only the most philosophical of men frame a conception or plan of what "the good life" for them is. We need the concept of "interest" as a middle term between the "wants" which are all that the hedonist will recognize, and "the Good" about which the idealist talks so glibly.

The aim of all social psychology must be to come to a systematic knowledge of all the different types of temperament and character, with their different hierarchies of interests. If we understood this, we should be as gods. Unfortunately there seems to be no likelihood of our achieving this knowledge within a finite time. But we may be able to help ourselves out by analysing the different ways in which the interests of different individuals who have reached the stage of having conscious interests, must react on one another. These would seem to fall under three main types, which I call Parallelism, Convergence and Divergence of Interests. There might be other ways of classifying them, as for example the scheme adopted by MacIver in his *Community*,<sup>1</sup> but this method has the advantage of exhibiting the principal devices by which Law everywhere seeks to regulate the conflict of interests.

<sup>1</sup> Bk. II, Chap. II, esp. p. 108.

*Case I. Parallel Interests :*

Scheme :

A and B each have an interest which can be directly satisfied by concerted action of a similar kind on the part of both. This concerted action appears to each to be a necessary and sufficient means for securing the interest of each.

E.g. : A and B may each wish to play football, or may each wish to secure the return of a Conservative government to power. Their parallel interests will lead them to support a common organization, and to contribute to it either by work or payment. The football ground or the speeches of their member are a source of common enjoyment to them. There is no reason why any conflict of interests should arise ; though of course it may arise, e.g. if A could play football all the week, while B could only play it at week-ends. This however would rather be an example of Case II.

*Case II. Convergent Interests :*

Scheme :

A's interest and B's cannot be satisfied by similar action on the part of both and they have no source of common enjoyment. None the less, action which serves A's interest happens to serve B's interest as well.

E.g. : A may have a typewriter and desire a bicycle, whereas B may have a bicycle and desire a typewriter ; or A and B may exchange mathematics lessons for Spanish. A has no desire to give more mathematics lessons than he can help. The amount each has to give depends on the situation of a market, in which there is a real conflict of interest between the buyers and the sellers. There is much less ground of common satisfaction than in Case I ; in that case, if A gives somewhat



more work or money than B, he will tend to think "it is all for the good of the cause"; there is no such tendency in Case II.

### *Case III. Divergent Interests :*

Scheme :

A can satisfy his interest provided he can count on B's not interfering.

E.g. : A wishes to fish in a certain river, whereas B wishes to try out speedboats on it. A mother wishes to bring up children as good Catholics, whereas their father wishes to bring them up as good atheists. Some delimitation of interests is necessary for both of them.

Parallelism of interests is the basis of *voluntary association*; Convergence of Interests is the basis of *contract*; Divergence of interests is the basis of *property*.

In all these cases social co-operation comes about because of the actual facts of the situation. But it is evident that in Cases II and III there is no durable coincidence of interests, and that no *regular* and *reliable* social co-operation is to be expected unless there is something of the nature of Law delimiting the spheres of the different interests, and an apparatus of sanctions to make it effective. This is only possible if nearly all the individuals concerned agree that a certain amount of regularity and security is in the common interest of them all—if their interests are parallel in this respect at least—and are willing to co-operate to maintain this regularity. Without being able to count on contracts being carried out or "property" (in the widest sense of the word) being respected, man could lay no far-reaching plans, and would tend to relapse into a condition of "living for the day".

At this point I meet with a difficulty of exposition. Contract, Property, Law, Ethos, Political Power are all

met with in their highest form *in the state*, and I think that their nature will be best revealed by investigating them there. It would be tedious to follow out their development in each of the various kinds of Interest-group. None the less, each of these institutions or social forms is found in every organized Interest-group, and for the same reasons. There are indeed, as we shall see, Interest-groups which are wholly unorganized, and which nevertheless behave as groups, and have the greatest influence on social and political life—let us take the readers of a certain newspaper for example. But in general, as soon as there arises a consciousness of divergence and convergence of interests, and a feeling that this may endanger the common or parallel interests of the members of the group, then there arises the demand for organization. Organization involves leadership, and the leaders impose a “law”—rules, statutes, articles of association—which must be in conformity with the purpose and degree of cohesion of the particular group, and with the principles of political power in general.

All these rules and articles aim at securing the loyal carrying out of onerous undertakings entered into by the members; and also at securing the private sphere of action reserved to each member against interference by other members or by the officers; they generally, but not always, include sanctions, such as fines and exclusion. Sanctions are not in my view the most essential feature of Law, which is essentially a recognized delimitation of “legitimate” interests. None the less, the “law” of private groups is almost inevitably incomplete and would be inadequate to secure the purposes of these groups if it did not exist within the framework of state law. There are many contingencies of conflict between their members for which private associations do not provide a solution, preferring to rely on the law of the land. Moreover, there are some conflicts capable of bringing about the disruption

of the whole group which can scarcely be settled without a provision of organized force, such as the state does not permit private associations to maintain. One of the principal marks of a state is that it is a collection of persons who are generally agreed that all organized force shall be centred in the hands of one government. There are of course border-line cases of nominal private associations which are really states, or trying to become states, such as the International Association of the Congo, or the Sinn Fein organization just before the conclusion of the Irish "treaty", or the Communist Party in China. These are often instructive, but they do not disprove the rule. Even the most powerful of all non-state organizations, the Roman Catholic Church, has to rely, for the internal disciplining of its members, to some extent upon the "secular arm". And the state-leaders, or government, who have the *final* responsibility for securing order and regularity of social co-operation throughout a certain territory, naturally claim the right to modify the "law" of the subordinate associations and to prescribe rules for them, so far as they judge it to be necessary. This is, as we shall see, the natural right of every leader everywhere who undertakes to secure orderly social co-operation within a given group.

In addition to the defectiveness of its "law", a private association differs from a state in that its leaders are often lawgivers, administrators and judges in one; these functions are not so differentiated as in the state; whence it is more convenient to examine the functions of leadership in the *state*, and apply our conclusions, *mutatis mutandis*, to the different types of private Interest-group.

On the other hand, private associations and groups are often, perhaps usually, far more powerful agencies for forming the ethos of their members than the state is. There are certainly many kinds of groups, as we shall see, whose cohesion is purely instinctive or "sympathetic".

However, most groups, in the course of their conflict with other groups, come to have what may be called an Ideology, a conscious conception of the kind of behaviour to be expected from the members of their group in view of the interest which it aims at securing. For example, the ideology of nobles, professors, factory-workers—that is, the conception of what they as a group are aiming at—has enabled them to stand together, to discipline their immediate impulses and subordinate them to a far-sighted will for the maintainence of certain kind of life. It has in fact given their members an Ethos. I use this term to express both a conscious sense of obligation to behave in a certain way, and an unconscious habit of behaving in a certain way; the one shades into the other.

I must reserve a general discussion of ethical questions till later,<sup>1</sup> only observing here that the current theories seem to fail, *either* through refusing to admit any sense of ethical obligation at all, *or* through assuming (on the basis of a theology or a metaphysics of pure reason) that everyone intuits the *same* principles of action to be obligatory. Certainly no adequate account can be given of political life, unless we recognize that men do normally feel an obligation to do what they regard to be right, as such. This must be considered an axiom of Politics. Mr. Carritt<sup>2</sup> has well shown that, unless we admit this, there is no escape from “general will” mystification. But it does not follow that there are any universally intuited duties, and we have to recognize that the standards of conduct believed to be obligatory vary tremendously from class to class and from locality to locality and from profession to profession. It is surely an axiom of politics that men will sincerely differ in their beliefs as to what is obligatory. In my view, Ethos is always the product of the “long will”, the enduring interests, of the members of an Interest-group; it is

<sup>1</sup> Chap. XII.

<sup>2</sup> *Morals and Politics*, pp. 2, 209.

on the opposition of "will" and "wants" that all Ethos is built up.

Law and Ethos go hand in hand, each strengthening the hold of the other. It is *possible* for a collection of people, tired of futile conflict, to submit to leadership and law, without having developed any ethos. Ethos has roots independent of Law. It might be said, I think, that Ethos is due to consciousness of parallel interests, Law to the consciousness of divergent interests. Again, it is *possible* for a group whose ethos is very strong to dispense with Law, that is, to dispense with any explicit regulation of divergent interests—but only, I think, if its members are rather unenterprising and unprogressive. For if they are not, new divergencies of interest will be always breaking out. However much I love my neighbour, the consciousness of new needs and the awakening lust for new enterprises will set problems hard to be solved on the basis of a traditional ethos. Moreover—and this is a vital fact too often overlooked in international and industrial struggles—the just solution depends *partly on the strength of our opposing wills*. I can have no legal right to a thing until I—or at least others in the same position as I am—will to have it and take trouble to get it. Consequently the solution must be found by an organization capable of *testing the strength of the divergent wills*; this is of the essence of a political organization. This is what the Interest-groups are on a small scale, and the State is on a big scale.

## **PART TWO**

### **GROUPS**



## CHAPTER VI

### THE TYPES OF INTEREST-GROUP FOUND IN THE MODERN STATE

All Government is based ultimately on Power. But power among men has many sources, of which numbers is only one. Another is wealth, another the capacity for organisation, another intelligence, and in fact it would be easy to mention many more.

LOWELL

POLITICAL activity is an attempt to find a widely acceptable and durable solution of the problems presented by the parallelism, convergence and divergence of interests. However, in the modern state this activity takes place upon several different levels, or in several different stages. There is a conflict between the interests of individuals within the various Interest-groups, and there is a conflict between the organized Interest-groups within the state. Perhaps this has not always been the case; perhaps it was not so, for instance, within the smaller Greek city-states or within the forest-cantons of Switzerland; but in the complex modern state political activity is mainly occasioned by conflicts between *organized* Interest-groups. I do not mean that the common interest upon which these groups are based is necessarily an economic interest. The organized economic groupings of employers and workers are certainly very important; but it is desirable to take a general view of the most various groupings in the state, in order to estimate just how important these groupings are. In suggesting that the primary political phenomenon is the conflict of Interest-groups, I do not at all intend to accept the Marxian materialist theory of history.



But to make a classification of types of Interest-group, we must make sure that our survey of them is complete. How is this possible?

In the first place, we have the clue of the Law. Law is a résumé of an infinite amount of human experience in deciding, in social situations which appear very similar, what distinctions are of practical importance. If the law of many different countries has decided to distinguish and treat differently, e.g., local government corporations, trading companies, trade unions, clubs, etc., we may conclude that this is because they function differently, exert different degrees of influence over members and non-members, and form distinct social types.

In the second place, we have the clue of the random sample. If we examine a large number of such groups taken at random, they will probably be seen to fall into certain categories.

In arriving at the following classification, I combined both these methods. On examining the names of organizations given in *Whitaker's Almanack*, the *London Telephone Directory*, and some local directories, they appeared to fall into categories suggested by an analysis of the English, German and French law of associations.<sup>1</sup>

The most fundamental distinction would seem to be that noted by many sociologists, viz. between the natural Community, which is born not made, and which is in main held together by bonds of pre-rational sympathy and not by conscious reflection; and the Association, which is formed of set purpose and held together by considerations of mutual advantage. (The terms are those of MacIver,<sup>2</sup> derived, I think, from Tönnies.) But no less important is the distinction within the latter genus between the Society, the interests of whose members are in the main parallel,

<sup>1</sup> Of course titles are not always a safe guide to the nature of the organization.

<sup>2</sup> *Community*, Bk. I, Chap. II.

and the Partnership, the interests of whose members are in the main convergent. The latter of these consequently is normally based on contract, the former is not ; the latter has normally a restricted number of members, the former is in principle open to all, or all of a certain category. Unfortunately it seems necessary to use these terms, "society" and "partnership" in a sense somewhat different from that which they bear in everyday life ; it is hard to find any others. "Ideal association" and "self-help association" would almost serve the purpose, but the former is too restricted. I believe all the familiar forms of Interest-group can be exhibited in terms of these fundamental categories (see Table I, p. 54).

TABLE I  
THE TYPES OF INTEREST-GROUP

COMMUNITIES (pre-rational)	ASSOCIATIONS (rational)	
	PARTNERSHIPS (convergent interests)	SOCIETIES (parallel interests)
<i>Ex. :</i> Localities, Clans, Races.	<i>Ex. :</i> Building Societies, Mutual Insurance Societies, Commercial Companies (though these legally a mixture).	<i>Ex. :</i> Most philanthropic, religious, and political associations.
<i>Communities which have grown out of Partnerships</i>	<i>Partnerships formed out of Communities</i>	<i>Societies formed out of Partnerships</i>
<i>Ex. :</i> Small professional and trade organizations in which constant contact between members is possible.	<i>Ex. :</i> Local co-operative societies. Some local government undertakings.	<i>Ex. :</i> Societies to promote the ideals of professional and industrial groups—scientific societies ; agricultural, engineers', accountants' Institutes.
<i>Communities which have grown out of Societies</i>	<i>Partnerships formed out of Societies</i>	<i>Societies formed out of Communities</i>
<i>Ex. :</i> Most small social Clubs on a political, literary, sporting, etc., basis.	<i>Ex. :</i> Self-help associations promoted by religious bodies, political parties, Freemasonry, etc.	<i>Ex. :</i> Societies to promote national or regional cultures; denominational and other restricted charities.

## CHAPTER VII

### THE POLITICAL STRENGTH OF INTEREST-GROUPS

Soon or late, it is ideas, not vested interests, which are dangerous for good or evil.

J. M. KEYNES

MANY observations might be made on the foregoing table which would be in place in a general sociological work, but which cannot be considered relevant to a work on political theory. Our table for instance brings out the phenomerron of *Linkage* between Communities, Partnerships, and Societies, which strikes one so powerfully in going through a random sample of the organizations in question. For instance, the Royal Agricultural Society, the National Farmers' Union and its County branches, the Marketing Boards for the different products, the Tithepayers' Defence Association and so on. The elements of Community, of Partnership, and of Society mutually strengthen one another; though sometimes the conflict of motives which they involve may make organization more difficult. The Marxian thesis, interpreted into this terminology, would be that the basis of Partnership is always the strongest. The Conservative and the Nationalist generally maintain that the unconscious ties of Community always prevail in the end over the deliberately-accepted obligations of Partnership and Society. The theorists of liberal-democracy in general greatly exaggerate the importance of Partnership in economic life, and of Society in political life; they tend to think of men as being ruthless egoists in business and public-spirited citizens in politics.

If we are to reach any conclusion on these issues, we must first distinguish the *internal strength* of an Interest-group from its capacity to influence the policy of the state. We might speak of the former as the *sociological* strength of an Interest-group, of the latter as its *political* strength,—except for our conviction that the internal coherence of a group depends largely on its being organized on the right principles, and that these are the same for the subordinate group and for the state. In view of the special importance of the State, these two aspects of a group's strength must be distinguished; and they do in fact correspond to the "private-law" aspect of the group and its "public-law" aspect, as these are distinguished by the continental Law of Associations. For a group may have such a degree of vitality and permanence and influence over the lives of its members that the Law must assign it the various rights comprised in the term "Corporate Personality", or else fall into the greatest absurdities and inconveniences—as was seen in England in the early nineteenth century, when the Law refused to recognize the corporate personality of commercial companies. These rights are, among others, the right to sue and be sued, and to hold corporate property. But a group may be internally coherent and durable, and yet unlikely to influence the functioning of government. On the other hand, party, religious, educational, nationalistic associations are likely to come into relations with State authorities, and consequently in most continental countries are considerably regulated. Continental law lays down the conditions on which an association can be considered to have corporate personality vis-à-vis its members, creditors, etc.; and also the conditions on which its existence can be permitted or encouraged<sup>1</sup>—the former conditions having to do with its inner cohesion and durability, the latter with its expected political

<sup>1</sup> Also the extent to which it may exercise state powers, such as the power of compulsory purchase.

influence in the life of the state. The conflict of the French state with the Catholic Church and its monastic orders is most instructive in this connection.

It might be thought that the internal strength of an Interest-group could best be measured by its numbers, its wealth and the length of time it had existed. But these indications may be fallacious; a group may be numerous and wealthy, yet moribund, or small and poor yet bursting with vitality. We must ask *why* a group is numerous, wealthy or long-lived.

It is not simply a matter of organization. A group may be organized or unorganized, and unorganized Interest-groups are often quite powerful. As Marschak<sup>1</sup> has well pointed out, an unorganized group is normally centred round a "carrier" (Gehäuse), such as a factory, or a newspaper, or a landed estate, or a tariff law.

The internal strength of a group seems to depend partly on factors having nothing to do with its organization, such as the power of its ideology and the degree of sympathetic community among its members; and partly on factors of organization, such as the degree of leadership and discipline and the harmony of interest between leaders and members, which it has managed to develop. Of course these two sources of solidarity are not independent, and may be expected to strengthen one another.

A group may be very strong in a sociological sense—its internal cohesion, durability and expansiveness may be very great—and yet it may obviously have no influence on state politics, simply because the common interest, which is its *raison d'être*, plays a very subordinate part in the life of its members, e.g. a sports club or a musical club. None the less, if an association appears to be strong and durable, we should hesitate to conclude that it has no political significance simply because its purpose does not seem at the moment to have much to do with

<sup>1</sup> *Zur modernen Interessendifferenzierung*, p. 5.

“ politics ”. The “ green ”, “ red ”, “ blue ” and “ yellow ” factions at the public games in Constantinople, the charcoal-burners clubs of the Risorgimento, the partisans of the theological doctrines of homousios and homoiousios, the Gaelic language clubs in pre-war Ireland, the physical training clubs in modern Czecho-Slovakia disprove this idea. We can say nothing positive as to the likelihood of the different types of association coming to have political influence. This chapter poses a whole series of questions which urgently need empirical investigation.

**PART THREE**  
**LAW**





## CHAPTER VIII

### INTERESTS AND RIGHTS

All men want some degree of Justice, but they only want it up to a point ; in claiming rights they always suppress one element or the other of true Justice. For example, they say that Justice is Equality—and so it is, but only between natural equals. Or they say that it is Differentiation—and so it is, but only between persons who are really different. Men judge badly because they ignore the factor of personal worth, and nearly everyone is a bad judge in his own cause.

ARISTOTLE

**T**HE traditional political theory considers society as a collection of individuals having Rights<sup>1</sup> against one another. Some of these rights are thought to arise out of the natural status of the individual, e.g. the rights of a minor ; but most of them are considered to arise out of agreements freely made between the individuals.

If mankind were content to wait until each want occurred in consciousness before attempting to satisfy it, no system of rights could have come into being. But man is aware of continually recurring wants, and knows that the satisfaction of these wants will be furthered by the co-operation or hindered by the interference of other men. He requires to have a reasonable expectation that his wants will be satisfied as they occur. Legal rights are claims to a regular, dependable satisfaction of wants in the future.

Neither of the two theories which between them held the field in Europe until recent times make it sufficiently clear how Rights originate. How can it come about that individuals claim certain satisfactions as their legal right ?

<sup>1</sup> The term " a right " is always to be taken in the sense of " legal right ".

The Natural Law type of theory asserted that every man had an innate consciousness of what was due to every other individual in every situation and every stage of society. Man had a natural right to have promises kept, a natural right to life, liberty and the pursuit of happiness, and so on. Since this view seemed to founder on the extreme, even sanguinary differences of opinion as to what these natural rights were, it was countered by the Positivistic type of theory, which maintained that all rights derived from the command of the "sovereign", by which it meant some man or body of men able to enforce obedience to his or their wishes. The objections to this view are well known—the difficulty of finding such a "sovereign" from whose power all rights in the society derive, and the patent fiction of attempting to explain customary rights in this manner; also when we ask: "Why are just these claims and no others enforced?" it is an unsatisfactory answer to say: "Because they *are* enforced." There were also many attempts to mediate between the two theories,—there was the line most commonly taken before Hobbes; on this view some rights were "natural", others imposed by positive enactment. But there was no agreement as to which was which, or whether they were equally binding.

Modern philosophy of Law, beginning I think with von Ihering,<sup>1</sup> has seen that we need the conception of "interest" as a middle term between "wants" and "rights".

A man who has interests must plan how he may secure the regular satisfaction of the demands of each interest with his limited resources; he has to be "fair" to his intellectual and social, his business and his recreational interests; he wills to subordinate the satisfaction of immediate wants to the maintenance of permanent

<sup>1</sup> *Zweck im Recht*, Chap. III, § 3, tr. Husik *Law as Means to an End*, p. 28 f.

interests. Such activity is purposive, it may be conceived as the achievement of a system of purposes, which however should never be thought of in isolation from one another. But the characteristic of all purposive activity is the conscious subordination of means to ends, and ends imply and exclude one another, they do not simply lie alongside of one another, as Economics until recently was inclined to assume. They may or may not be built into a plan of greater or less consistency. In fact there is a *logic of purposes* which determines the relative strength of the various groups of persons; and this relative strength determines the Law.

A man who has reached the stage of having interests sees that for the regular securing of these interests the regular co-operation of others is as necessary as his own efforts and sacrifices, and wills to secure this co-operation regularly and reliably. Let us take the case of two such individuals, X and Y, of whom each needs the co-operation of the other for the securing of his interests. Each sees that a certain minimum of co-operation or non-interference by the other is necessary to him. Perhaps at the moment X might *force* Y to give his co-operation, or to refrain from interfering; but he may not always be in a position to do this. Physical force is at all times an irregular and uncertain way of securing the co-operation of others, and there are some kinds of co-operation which, as we shall see, cannot be secured at all in this way. Hence he will offer Y an *inducement* to help him or not to interfere with him, by promising to co-operate in furthering Y's interests, on terms to be agreed between them. If X and Y have no other bond of common interest between them, except this of being at the moment indispensable or vexatious to one another (as in the case where their interests are merely convergent or merely divergent), each will offer the *minimum* inducement necessary. Each wants to establish a claim upon the other's regular co-

operation or non-interference, and the inner logic of his own interests determines how much present satisfaction it is reasonable to forgo in order to establish such a claim. There is no reason to suppose that they will easily agree as to the amount of present sacrifice X should make in order to establish a claim to Y's future help or non-interference; each will estimate the urgency of the present and the chances of the future differently, and it will be a matter of skill to find a solution agreeable to both. Suppose, for example, they agree that it shall not be lawful for X to entice away Y's servants, or for Y to pick mushrooms on X's land. It does not at all follow that they will agree to this solution for all future time, when X perhaps has no mushrooms, or Y has no fear that his servants will leave him. Still less can a sovereign authority arbitrarily fix the laws of property for all X's and Y's in respect of servants and mushrooms without regard to the relative strength of the Interest-groups involved. Since however it is man's desire to find a basis for *regular* co-operation or *regular* non-interference of others that is the real power behind the Law; any man who can find durable and widely accepted solutions of the problems of convergent and divergent interest will earn great prestige in any society and his solutions will tend to become law. Any man who can not merely find solutions, but provide the force necessary to make the fulfilment of legal claims certain, will become leader, prince, governor or king of the society.

We may then define a legal right as "a claim to the regular co-operation of all persons of a category which has secured widespread recognition and agreement, and is supported to some extent by sanctions". A state is first and foremost a group of persons which co-operates to ensure that there shall be recognized rights.<sup>1</sup> But there

<sup>1</sup> It may be thought that this account lays too much stress on one department of law, that of "civil" and "private" law.

are no eternal "natural rights". The conditions which are sufficient to establish any right change from age to age and from country to country. At most one can say that in any particular state of society such and such a situation will normally establish such and such rights. The fundamental principles of economics and of politics are one and the same; <sup>1</sup> there is a *market for rights*. Where there are several buyers and sellers there is a price; where there are two groups of similarly-interested persons, there are likely to be recognized rights.

At a given time and place five hours' labour by X in helping Y with his harvest will normally call forth eight hours' labour by Y in helping X with his timber-cutting. So at a given time and place being a landowner, or being a wife, or being a testator, or being a creditor will normally call forth a certain kind of beneficial social co-operation. There is nothing eternal or inevitable in the former ratio—it would be changed with a change in the proportion of suitable timber-cutters to suitable harvesters. So the rights of landlords, creditors, testators or wives will be changed when the number and influence of these Interest-groups in the community in question changes. Here, too, as in economic exchange, there will always be certain underlying physical and psychological conditions of the given society which give changing content to our ideal of

I try to show in Chap. X below that the principles of criminal and public law are essentially the same. As is well known, primitive law is not differentiated as modern law is, and the private law aspect of it seems to me to be the predominating one.

<sup>1</sup> But political activity seems to take place upon a "higher" plane—to be confined to men who are conscious of durable interests, and will to secure these by association and other means. It is thinkable that some men might economize, without having formed the conception of enduring interest. On the other hand, political action cannot achieve the *finer* adjustments of resources to wants.

“natural justice”. What rights must the skilled offer to the unskilled, the men to the women, the natives to the foreigners, the civilians to the soldiers, the young to the old? The terms of the legal compromise between these interests which are considered “reasonable”, “normal”, or “natural” vary from age to age and from place to place—not however to an infinite extent, since they are based upon physical and psychological necessities under which man lives. These are the necessities of age, sex, manual and intellectual ability, human and physical fertility on the one hand, and the hierarchy of human instincts and interests on the other. The urgency of the desire for food, sleep, companionship, etc., fluctuates from moment to moment, and it is these fluctuations in relative significance which Economics studies. But when we look below the surface fluctuations, we find that the fundamental interests of man stand to one another in a hierarchy of relative importance which does not change very much. There is a sense in which water to drink is really and eternally more important than diamonds for ornament. “Is not life more than meat, and the body than raiment?” To understand this vital hierarchy of interests and its differentiation in the different types of men is true conservatism.

Thus the motive force behind the Law is man’s will for stability in an unstable world. This almost universal interest in having a degree of stability—in “knowing where you are”—was and is a sufficient motive to make men resort to arbitrators and doomsmen to settle clan-feuds and personal disputes—for such seems to have been the origin of Law, at least in Europe.<sup>1</sup> (This is why the utter regularity of the heavenly bodies in their revolutions—the “law of nature”—has again and again been taken as the ideal of all human Law). It was a sufficient motive to lead

<sup>1</sup> See below Chap. XI and cf. W. A. Robson: *Civilisation and the Growth of Law*, p. 64 and *passim*.

men to the *conception* of Law and law-abiding government, but it is not a powerful enough motive to achieve the regularity thus conceived of. The idea of law incipient in the dooms of the doomsmen would be swallowed up again in lawlessness, were it not for the existence of governments having power and wielding sanctions. And so we come to the trinity-in-unity of human institutions—Law, Organized Force, and Government—which, independent in conception, have grown up together, so intertwined that none of the three could exist without the others. It will be our task to try to analyse the infinitely subtle relationships which subsist between them.

For the present, we may liken Law to the price list of ruling prices in a large produce exchange or stock exchange, which an experienced official marks up from time to time ; which serves as a guide and a basis for the buyers and sellers who have to do business there, and also probably for thousands of others who have smaller transactions to make or are far from the great centres where the prices are formed. Or we may liken it to an armistice line skilfully delimited between two armies, whose front lines have long moved confusedly this way and that, whose leaders have each formed an estimate of the chances of future fighting and agreed for a while on terms of co-operation which will be tolerable for both.<sup>1</sup> Law does not necessarily mean a regulation which any party regards as ideal. Law is not the actual relations of human

<sup>1</sup> But this simile is not quite correct, for it makes Law out to be more static than it is. We may envisage every pair of litigants like Paris and Menelaos in the Iliad, as champions of two invisible armies, who are all the while exerting pressure upon one another, and whose position will be improved or worsened by the outcome of each suit. But the pressure is exerted by indirect methods. It is in the main exerted through the administrator and the legislator, to some extent through the judge. See below, Chap. XI.



beings, but the conditions and consequences of their relations—consequences of their past, conditions of their future social relations.

The reader may feel at this point that we have unconsciously relapsed into the General Will mystification which we set out to avoid. For a given legal solution, e.g., the punishment meted out to a particular kidnapper, does not represent the relative strength of the particular kidnapper and of the particular parent whose child has been kidnapped; it represents the relative strength of their groups, the groups of those who wish to kidnap and those who wish to protect their children. Yet these groups are, in a normal society, quite *unorganized*; how then do they make their strength felt? The answer is, that those members of a group who are in a "strong" bargaining position exert pressure upon the administration, which has to maintain itself in power by upholding Law; and this necessarily improves the legal position of the "weaker" members of the group, owing to the Technique of Law, which can only deal with persons in Categories and must treat all persons of a defined category as equal. Why should a parent, whose children are in no danger, exert pressure upon the administration to make the law against kidnapping more severe and more effective? Because he feels a certain community of interest with other parents, and wills to improve the security of parents as such—thus acting as a member of an unorganized Interest-group. The means whereby unorganized groups exert pressure on government are very real, though far less effective than those which are at the disposal of organized groups. Owing to the technique of Law the action of one member of an unorganized group affects the position of other members, and so justifies us in speaking of the strength of the group as a group.

We have deliberately chosen a somewhat strange example from the sphere of criminal law. The process is far more

obvious in the case of such groups as employers and employed, testators and heirs, motorists and pedestrians, publishers and authors, teachers and parents.

### APPENDIX TO CHAPTER VIII

One of the most unfortunate results of the separation of economics and politics is that it has obscured the true nature of Money. In a certain very special kind of society, such as developed in nineteenth-century western Europe, everyone takes it for granted that the purchasing power of money will be stable, and also that practically everything—social rank, recreation, education, even health—can be bought for money. Consequently, in this special type of society, all conflict appears to be an *economic* conflict under fixed political rules. The struggle of the Interest-groups appears as a struggle for the satisfaction of wants and for the money to secure their satisfaction in future. The opposition between different kinds of Interests, such as between intellectual and manual workers, or men and women, is not so apparent, since it is assumed that the conflict between them is simply a struggle for money.

All this is very different in a type of society in which money is only accepted for a few limited purposes, e.g. in a predominantly peasant society ; or in a society organized in rather rigid castes and estates, in which, for example, the estates of nobles or merchants or officials have interests of their own which they are determined to secure, whatever the cost in money. Above all, as the experience of the last fifteen years has shown, things appear very differently when once the stable value of money is seriously questioned ; in such times we find people taking quite different measures, co-operative and political, to secure their vital interests when the liberal-democratic method of heaping up “ purchasing power ” began to fail them.

This had come to be looked upon as the only natural method, whereas co-operative alliance and political pressure were frowned on as something unnatural and exceptional; but in recent years it has become clear that the whole liberal-individualist outlook is rooted in the existence of one fundamental social device, viz. stable-value money. It is now seen that stable-value money does not exist by law of nature, but is a social artifice, deliberately contrived in the interest of certain groups of people; as soon as its stability is called in question, we find not merely that it is only *certain* Interest-groups which have an interest in stable-value money, but that different Interests understand stability in quite different senses, some desiring its value to be stable in terms of labour, others in terms of home commodities, others again in terms of foreign commodities. In fact it has become clear that money is merely one of the legal "rules of the game" about which the Interests struggle; and the enduring settlement of this legal "rule" in a way that suits their own interest is far more important to them than immediate monetary gain or loss.

## CHAPTER IX

### THE TYPES OF LAW

It was whilom in the laws of the English that people and law were by ranks ; then were the counsellors of the nation worthy of worship, each according to his condition, eorl and ceorl, thegen and theoden.

And if a ceorl throve, so that he had fully five hides of his own land and special duty in the King's hall, then was he thenceforth of thegn-right worthy.

And if a merchant throve, so that he fared thrice over the wide sea by his own means, then was he thenceforth of thegn-right worthy. . . .

*Ancient Laws of England*

**A**N agreement for mutual help between two parties must—unless brought about by fraud—be to some extent in the subjective interest of both—this is the truth in the contentions of the defenders of *laissez-faire*. But yet in the vast majority of agreements it may safely be assumed that there is a “stronger” and a “weaker” party—by the “weaker” party I mean that party to whom, whether for physical or psychological reasons, the co-operation of the other is more urgent. The case where the needs of both are equally urgent, where both are equally “free” to conclude the agreement is a possibility, certainly, but it is only a limiting case. The subjectivist, “marginal-utility” economics, ignoring the factor of permanent bargaining position, is obliged to hold that a man who for a drink of water in a desert should sell himself into slavery would be making an exchange that was worth while for him. It ignores the fact that such an exchange could only take place in virtue of a certain legal and social system, which enabled the possessor of the water to take *enduring* advantage of the momentarily weak bargaining position of the other.

Undoubtedly every civilized system of law would refuse to enforce a bargain made under *such* a degree of duress, but it is a matter of degree; *all* bargains involving an onerous undertaking to be performed in the future are made under a certain degree of duress.<sup>1</sup> (Whence perhaps the very ancient widespread and persistent sentiment against living on interest.) The "weaker" party no doubt considers the agreement worth while for the sake of obtaining the co-operation of the other, *given* the existing set of legal institutions, but he is "weaker" in that, in order to satisfy his need, he has to perpetuate for a certain future time his present unfavourable bargaining position. And though in our West European society it is common for the "stronger" party to be a capitalist, yet this is only one special case; he may equally well be the possessor of physical strength or of special skill. It is the legal system which enables anyone possessing a temporarily "strong" bargaining position to turn it into a position of durable advantage. This happens of course not merely where a man, let us say, in order to enjoy the services of a very skilful surgeon, pledges himself to pay for these by instalments over a long period, but also where, owing to a stable monetary system, he is able to pay him the accumulated earnings of many previous years. Nearly all parties, "strong" and "weak", prefer that there should be a legal (including a monetary) system, and this system but fixes and crystallizes inevitable tendencies in human nature; still our knowledge about simpler, non-monetary, forms of society tells us that this ability to stabilize a temporarily strong position *varies according to legal and social institutions*. Moreover, in some societies we find that it is the status in which the individual is born that is stabilized by law, in others the law provides him with forms of free contract to stabilize—

<sup>1</sup> Whence the criterion in English Law of what the "resolute man" might be expected to agree to.

for as long as he can—*any* favourable positions in which he may find himself. It is evident that men aim at different kinds and degrees of stabilization. In my view, the main driving force in politics is this difference of opinion among men as to the degree and kind of stabilization that they desire.

(a) Men may prefer a Law which is *weak* in respect of its sanctions and also *inextensive* in respect of its provisions.

An Inextensive Law is one which only recognizes very few and simple kinds of property-rights, contract-rights and status-rights; which has for example no doctrine of Uses or of Corporate Property; which only regulates some few simple relationships, and if a wife or an employee or an heir alleges that he is being treated unreasonably, will simply say: "See thou to that!" It will not try to make more and more subtle distinctions in the interest of greater fairness, but will leave the less important disputes to be dealt with by a trial of strength between the individual parties. It will refuse, for example, to inquire into the management of workshops by their owners or the conduct of club officials towards their members.

A Weak Law is one whose provisions are not well enforced, owing to impotence or incompetence of the executive authorities.

A Law which is both inextensive and weak gives little scope to "strong" parties to stabilize their positions of advantage. The weaker parties will not make agreements for long terms, and will tend to break agreements as soon as fortune puts them in a more favourable position. This is likely to lead to alliances of the stronger parties to enforce agreements which they have extorted. But such alliances will tend to give rise to counter-alliances and an excessively unstable condition of things. This is the condition of things that normally obtains in international affairs; and which obtained within the countries of mediæval Europe.

(b) Or men may prefer a Law which is *strong but in-extensive*. Such is the law of the *laisser-faire* liberal type of state. It is the Law preferred by self-reliant individualists who set a high value upon their own powers and abilities, and who desire to exploit their abilities to the utmost so as to achieve a continuous improvement in their own bargaining position, at the risk of perhaps suffering a continuous fall. In such a state the prizes of success are very great, and men are willing to suffer the extremest consequences of failure.

(c) Or again men may prefer a Law which is *strong and extensive*. Such a Law aims to extend "collective security" to every detail of social life, and to protect weaker individuals by the most refined and subtle distinctions; and is rigorously enforced. This will come about either where the dominant "groups" are not confident that they will be able to improve their position further, where they feel they have already reached their high-water mark; or where there is a marked difference between the bargaining strength of the parties individually and their strength as a collective unit,—where, for example, employers are in a strong position if one considers each firm separately, but are, for some reason or other, not so well able to combine as the workers are, so that they are less strong collectively than the workers. In such a society the conditions under which legally valid contracts may be concluded are made extremely elaborate and restrictive. This is the socialistic type of Law.

(d) Finally, there is the kind of Law which is *extensive* in its scope *but weak* in its sanctions. This is the worst kind of Law.

There can be little doubt that the tendency at the present time in European and American states is to make the Law more and more extensive and restrictive.<sup>1</sup> One

<sup>1</sup> Cf. Roscoe Pound: *Spirit of the Common Law*, p. 185.

example among many of this tendency are the conditions which are coming to obtain in English agriculture, where in many branches only registered producers can make valid contracts, and only with certain distributors, and within a certain range of prices. (So that there has come to be a *status*<sup>1</sup> of "registered potato producer", which has been bought and sold.) It is necessary to be clear as to the cause and effects of this tendency away from free contract and towards protected status. For example, it cannot, apart from subsidies, enable the farmer who has miscalculated the amount of his crops to get a higher price for them, or enable the juvenile protected by the Factory Acts to get a higher price for his labour. But it does prevent a continual worsening of their position; it prevents the farmer from getting more and more into the debt of the dealer, and the juvenile from getting more and more used up by the employer. And as we know, this change of the Law in the direction of greater restriction has been brought about largely by the Organized Interests of the stronger farmers and of the stronger workers who forgo chances of immediate advantage to themselves, not entirely out of sympathy with the lot of the weaker, but also out of concern for their own future bargaining position, for their own enduring interest, considered as a group-interest. They feel that the further depression of the weakest members of their group will lead in the end to the depression of them all.

There are evidently limits to the advantage which a group can gain by a *restrictive* system of Law devised in its interest. Since all law is but a framework within which voluntary co-operation between different parties is effected, individuals who happen to be in a "strong" position at any particular moment can no longer make such advantageous use of their bargaining position and

<sup>1</sup> I consciously use this term in a wider sense than that in which it is commonly used in the standard books of Jurisprudence.



will adopt one of three different courses of action.<sup>1</sup> They will either wish to secure the regular, legally sanctioned co-operation of the opposite party on somewhat less favourable terms ; or they will no longer find it worth while to co-operate at all ; or they will go behind the law and rely on " gentlemen's agreements ". For instance, suppose house rents are controlled in the interests of tenants (i.e. kept by political action lower than the landlords could otherwise get). Probably the vast majority of house owners will contract on the new basis ; but a number of marginally situated owners will retain more rooms for themselves or will diminish the sums they spend on upkeep ; and a number will make extra-legal arrangements with their prospective tenants to get more than they could secure by legally valid contracts. At least this was roughly the experience of the control period in England. Thus a number of the weakest members of the group, e.g. of house-users, who under the old unregulated conditions would have been able to secure a house (though at the cost of a permanent depression of their standard of life), will no longer be able to secure satisfaction at all, and will be obliged to fall out of the group of tenants—e.g. to buy their houses by instalments—or to circumvent the Law by privately offering their landlord more than the legally-fixed rent. Thus increased legal restriction intended to favour the interests of a group will be likely to put some members of this group as well as some members of the groups they deal with " out of business "—at least out of such business as requires legal sanction. It is thus quite conceivable that a legal restriction intended to favour a certain Interest, e.g., the tenants may injure more individuals belonging to that group than it injures in other groups, e.g. the landlords, which it is intended to penalize. But we cannot at all agree with the more naïve economists that the competition

<sup>1</sup> See also Chap. XI. below, where this point is further illustrated.

of these individuals, e.g. tenants, will simply bring things back to the position in which they were before. Competition between the remaining individuals of the Interest-group which promoted the change in the law may now be more severe than it was before, but the struggle will be fought out under different rules. If the rules are too unsatisfactory, it is possible to a considerable extent to dispense with them by mutual (extra-legal) agreement; and if such arrangements become general, we find ourselves back again in the state of society depicted under (d) above, in which the Law is extensive on paper but ineffective in practice. Such was the state of affairs in the U.S.A. under Prohibition. The disadvantages of such a state of society should be carefully weighed by those who advocate very extensive legal restriction.

However, in opposition to liberal-democratic theorists, we assert that *the rules are supremely important*; that changes are not unforeseeable, but are linked up with changes in the economic equilibrium; that it is quite possible for an Interest-group to get the rules altered in the direction of greater or less restriction so that its members gain by the alteration; that even if every individual who gains in one capacity (e.g. as workman) loses in another capacity (e.g. as consumer), yet even so the question *which* interests are encouraged and which are discouraged is vital to the state; that (as everyone knows in the case of athletic contests) one type of individual is successful under one set of rules and quite another type under another set of rules—a vital consideration for the state; that no one set of rules is more “natural” than any other set, though all rules are subject to certain “natural” necessities; finally, that whether a change in the rules brings a net gain or loss in Happiness or Welfare is beyond the power of anyone to estimate except on the basis of his own ethical convictions, in which he will necessarily be a child of his circumstances and of his age.

## CHAPTER X

### THE BASIC LEGAL FORMS WHICH THE POLITICAL STRUGGLE TAKES

In the Germanic Truce or Peace, which played so great a part in the building of our Common Law, what have we but the recognitions and securings of a series of social interests—in the house-peace, the peace of the borough, the peace of the great highways, the church-peace, the peace of the Gemot, the peace of the market?

There is no eternal law. But there is an eternal goal—the development of the powers of humanity to their highest point.

R. POUND

**A**LL developed political life is rooted in the use of a very few legal devices, which have been evolved in the course of the struggle between the Interests. These devices however are not fashioned once and for all, but are fluid and applied in ever-changing forms, as the constellation of Interests in any given society demands. The most fundamental of these are Contract, Status and Property.

The traditional division of substantive law into Law of Persons and Law of Things, clumsy as the expression is, seems to give a clue to the fundamental necessities of social co-operation.

(A) An individual may be concerned to rely on the regular (1) co-operation of *determinate* persons, or (2) of a *determinate class* of person. (1) In the former case society provides him with the device of Contract, which enables him to count on the co-operation of other persons regularly over a period, and to secure the utmost enduring advantage from any "strong" bargaining position in which he may find himself. However, the Law can only give him this

security by applying what is—very inconveniently—called “moral” constraint (*vis compulsiva*) to the persons with whom he contracts. That is to say, the Law can often induce an individual to carry out his contracts by threat of disagreeable consequences, but it cannot as a rule physically compel him to give the co-operation necessary. Thus all moral constraint has its limits. (2) But the Law of Persons originally meant the rights arising out of an enduring Status assigned by the Law to certain classes of persons. Formerly there were many more legally recognized ranks of status than there are now; at present the principal forms of recognized status are those of husband, wife, lunatic, minor, ward. By means of this device a “wife” for instance secures the regular co-operation of her husband—not however *any* degree of co-operation which she may contract to secure, but the particular measure of co-operation which the law requires of anyone who takes on the status of husband. It is evident that the Law of Status does not allow the individual to take full advantage of a strong bargaining position in which he may happen to find himself: it secures the interests of wives-in-general rather than of every individual wife. Some kinds of Status may be acquired by birth or by accident, e.g. lunacy, others by voluntary act, e.g. marriage. It appears to me that when freedom of contract with certain classes of persons is considerably restricted, this amounts to the legal recognition of a new form of Status. One might, I think, reasonably hold that “trade unionist”, “registered medical practitioner”, “bookmaker”, were now forms of status. It would appear that legal status was devised to cover all those relationships where there was (a) marked and striking inequality of bargaining power as between the parties, and either (b) a natural harmony of interest between them, as in theory between husband and wife, parents and children, so that the stronger party would not want to exploit his stronger position to the full extent, or

(c) a natural disharmony of interest, as in the case of minors and bankrupts, so that it was felt necessary to safeguard the interests of the weaker party.

Thus the Law of Persons in its two main forms is directed to securing the regular co-operation of determinate persons or classes of persons by the use of moral constraint.

It does not require a very elaborately organized society to reinforce the fulfilment of contracts and the recognized duties of status. Since the person who owes the duty is known and determinate, a strong public opinion alone is often quite effective.<sup>1</sup> In more primitive forms of society the swearing of an Oath is regarded as a most powerful form of moral constraint to ensure the regular fulfilment of this type of duty.

(B) It is otherwise with the Law of Things. The typical device of this sort of Law is Property in all its forms. The *raison d'être* of this institution is a person's desire to obtain the regular co-operation of others for a long period on the basis of his present bargaining advantages, to make these present advantages a condition for all future co-operation, to enjoy them permanently and exclusively. Anyone who is unfamiliar with the Law naturally tends to think of "Things" or "Property" as something material and tangible, but jurists are agreed that it is impossible to define it as anything more definite than a "group of advantages" (Holland). Property rights are of course groups of advantages conferred by the law, but the law cannot attribute such rights except in conformity with the natural facts. A man's own inventiveness ("intellectual property"), the confidence of others ("goodwill"), physical strength ("right of conquest"), or lucky accident are the natural advantages of bargaining position to which the Law attaches recognition and sanction. Much as some legal philosophers dislike the fact, the idea of Possession

<sup>1</sup> It does not follow that primitive societies will be willing to enforce bare contracts.

is basic for any account of what Property of any kind means—Possession with its twin criteria of *de facto* control and intention to exclude all others from the advantages in question (*animus possidendi*). Possession involves “the continuing exercise of a claim to the exclusive use” of something,<sup>1</sup> and Ownership is legitimate possession. The aim of acquiring property rights is to secure for yourself certain advantages which others might take from you, and to stabilize these advantages as a condition which all others who need your co-operation must recognize. But property rights are in general valueless apart from the co-operation of others, they are subsidiary to contractual rights; the man who has built a house or discovered oil or invented a machine wishes to secure the future co-operation of others on the basis of exclusive possession of the advantages he now has. A man for instance wishes to secure labourers for the exploitation of the oil he has found without having to contract with them as to the division of the product.

It would be theoretically quite possible to have an ordered society on the basis of contractual obligation only or on the basis of status only, but this would not suit the Interests which are normally dominant. It would hardly be possible to have an ordered society on the basis of property rights only, since property rights do not secure the positive co-operation of anyone, only their non-interference. Thus they are generally subsidiary to contractual rights, enabling the party contracting to exploit his bargaining position to greater advantage. He desires to secure a certain permanent advantage as against any other person whose co-operation he may need. What he requires to this end is that society shall *exclude* others from the enjoyment of his special advantages, by the use of moral and also of physical constraint (*vis propulsiva*), since it is quite possible to use physical constraint to prevent the invasion of

<sup>1</sup> Salmond : *Jurisprudence*, p. 298.

property-rights (or most property-rights) though not to enforce positive undertakings. But here, too, regular co-operation of others is the ultimate aim ; no one desires mere freedom from disturbance for its own sake. Thus we see how superficial was the liberal-democrat idea of J. S. Mill, who held that the state should confine itself to preventing individuals from violating the rights of other individuals, i.e. the property-rights and the quasi-property rights of free speech, etc. The true freedom of the individual depends precisely on the extent to which the state has given away these rights.

It will be clear on a deeper view that there is an ever-shifting boundary between contractual rights and property rights ; from the hedonistic, individualistic point of view of liberal-democracy the former appear to be acquired for the sake of the latter—we seek the co-operation of others in order to enjoy ourselves ; from the dynamic point of view which regards society as a perpetual rise and fall in the power of different Interest-groups, the latter exist for the sake of the former. The term “*vested interest*”—often used very loosely and carelessly—is an indicator of this. The vested interest, e.g. of the shareholders of a railway company in a certain rate of dividend, is a certain position of advantage which has been *regularly* obtained as the outcome of innumerable contracts over a long period and has come to be recognized as a property right, to be made the basis of future contracts, e.g. when selling their railway to the state. A “vested” advantage is one that a person has long contrived to enjoy and which society now recognizes as the legal basis of all future co-operation with the person in question. Men plan and co-operate far less to obtain maximum present enjoyment than to secure permanent improvement of status, improved “permanent possibilities of enjoyment”, to adapt Mill’s well-known phrase.

Yet even this might be misleading ; it is my conviction

that the “ greater glory ” of the theatre, of domestic service, of Scotsmen, of the free churches, of the teacher, of divorced persons—to name some possible Interests—are political ends in themselves, and sought for their own sake as well as for the improved possibilities of enjoyment to individuals in the future. Men will strive and sacrifice themselves for Science or for the Church without a thought for their individual future enjoyment, even though this will in all probability result from the improved status of the Interest-Group. The will to power tends to develop from being an instrument for consumption into being an instrument for the realization of a specific Ethos.<sup>1</sup>

The chief feature of these conceptions is their elasticity. Probably no society has been without something corresponding to legal status, legal contract and legal property, but these conceptions can be given a wide or a narrow interpretation. It is around their interpretation that the age-long political struggle has been waged. Could the bare promise of a trustee be considered a contract ? How far can a man’s property be considered his after his death ? Is the status of a priest irrevocable and unalterable ? “ Personal property to be allowed, not property in the means of production ” ; but what are the means of production ? Can a man contract to pledge his body, or the whole of his means of livelihood to his creditors ?—here are a few of the historical controversies connected with these conceptions. It seems on the whole that widespread status-rights involve a restriction of property-rights and contractual rights, and vice versa ; widespread status-rights have a conservative tendency, and the status-rights of privileged groups, such as nobles or clergy will be attacked in the name of the natural rights of property and free contract. The less privileged groups have attacked status-rights in the name of free contract, but have later been driven to seek new status-rights as a defence against

<sup>1</sup> See above, Chap. II, Appendix, and below, Chap. XII.



the owners of property-rights ; this seems to be the case with the property-less working-class.

It is now generally agreed, after long debate, that there is no essential difference of principle between civil wrongs and crimes. The thesis long maintained that tort was an invasion of the rights of a private person, while crime was an invasion of the rights of the state, has been shown to be untenable. It seems to be part and parcel of the "Sovereignty" mythology, which accompanied the development of the constitutional state out of the legally irresponsible monarchy. Undoubtedly many crimes were originally invasions of the recognized interests of the prince. But it is our firm intention in trying to understand political affairs not to introduce any mysterious "corporate personalities" as subjects of purposes and interests if it can possibly be avoided. In fact we see that the criminal law protects the same interests of private persons as does the civil law ; often civil and criminal remedies, public and private prosecution are provided alternatively for one and the same offence. Both civil redress and criminal punishment are intended to be, directly, a deterrent to the invasion of recognized rights, and indirectly, an inducement to ensure regular social co-operation on the basis of those rights. The law adopts whichever mode of procedure seems most effective for this purpose. On the one hand damages can seldom be regarded as a fair equivalent to an individual for the particular disadvantage he has suffered through the invasion of his rights<sup>1</sup> ; on the other hand in all developed systems of law the criminal too is thought of as having interests which must be respected in the punishment—he is punished as a citizen, not as an outlaw. The fact that some wrongs are punished by civil damages to the individual wronged, and others by criminal penalties is due partly to factors

<sup>1</sup> Aristotle's theory of corrective justice is certainly wrong.

of convenience (it may be difficult to determine who are the persons injured, or inexpedient to allow anybody to profit out of the commission of certain wrongs), but mainly to factors of Ideology. Every Interest desires to convince the rest of the society that certain rights and institutions are of paramount importance and vital to the existence of the whole Social Compromise. Every ideology appeals to people's sense of what ought to be. It is essential for the regular co-operation for which society exists that there shall be a sufficient measure of agreement between the various ethical outlooks. With a view to promoting general agreement that some values are absolutely essential to society, some wrongs are treated as crimes; it is intended that they shall carry with them a greater stigma of social dishonour than is the case with merely civil wrongs. The distinction on a closer view is always seen to be relevant to the ideology of the Dominant Groups; thus for instance in England theft is a crime but adultery is not; in Soviet Russia employment of others for profit is a crime, but blasphemy is not. There are many possible "tables of Values",<sup>1</sup> many that are impossible absolutely; many that could not arise, many that could never become dominant in any given condition of society. Every society must have an ethical foundation; without that its *raison d'être* of regular co-operation could not be achieved. This is what we shall describe below as its Ethical Equilibrium.

The Law of Procedure, which has to do with the manner in which remedies are to be sought and applied, is in the main determined by the technique of Law, by the fact that it must be general in its terms, must treat all persons of a category equally, must be certain in its application and capable of being known in advance if it is to achieve its purpose. We do not say that all which is commonly called

<sup>1</sup> See below; and Nietzsche: *Zarathustra*, tr. Common, pp. 65, 239 ff., *Von tausend und einem Ziele, Von allen und neuen Tafeln*.

Law conforms to these standards, but that this is what all Law is intended to be, just as a knife is intended to cut. Thus the Law of Procedure is not seriously involved in the social conflict of Interests, except that some groups may be interested in a procedure which is inefficient from the technical standpoint, and the legal profession is likely to be interested in a procedure which is mysterious and costly. If some persons are given special advantages of procedure, these can more conveniently be considered as substantive rights of status.

The sharp distinction made in continental systems between Public and Private Law has been the source of many misunderstandings. In the first place it has led to the view that the State, conceived as a mysterious super-personal entity, has rights and therefore interests of its own; in the second place people have imagined that in deciding matters of private law, the state is guided by principles of "justice", in matters of public law by principles of "public policy". The first of these erroneous views we have already dealt with; the second has led to an extreme and false separation of Law and Politics—surely administration ought to be "just", surely the Law ought to embody "public policy"?

Certainly there is a technique of legislation, of judicial interpretation, and of administration, and these techniques are different; the aim of good government is to use them all concurrently for the one purpose for which government exists, viz. for securing the regular and harmonious co-operation of the individuals governed. This is in my view the only "public interest" in the proper sense of the words. No term has been so abused in political life as this one of "public interest"; it always, in fact, means the interest of a group of persons (possibly the majority) which claims as part of its ideology that its interest ought to prevail over the interests of all

other opposed groups. Thus “ the land should be nationalized and used in the public interest ”—such a measure (it may be a desirable one) is conceived in the interest of the landless, but by no means in the interest of the landowners. The ideology of those who advocate this measure claims that the landowners, in their own true interest, should be willing to give way in this matter, and to continue to give their social co-operation on less favourable terms than before. But it does not follow that the landowners will be willing to do this—there is no law of nature that compels a less numerous Interest-group to submit to the wishes of a more numerous Interest-group. If they are a small body, whose co-operation however is vital to the rest of the community, they will be in a “ strong ” bargaining position even apart from their present legal property rights, and in that case it is likely that such a measure would not really be in the interest even of those who advocate it. These are questions which it belongs to the “ technique ” of good government to decide. Public policy is “ the satisfying of as many interests as possible, with the least possible sacrifice ”.<sup>1</sup> But this is equally the aim of “ Justice ”. The techniques, however, of dispensing justice and of administration are different, a point which will be considered in greater detail below.<sup>2</sup>

The English view on the other hand which (while making a curious and anomalous exception of “ The Crown ”) treats the rights and duties of public officials as if they were practically on a par with the rights and duties of ordinary citizens, is equally misleading, as will be suggested below. Provided we do not fall into either of the errors mentioned above, the distinction between Private Law and Public Law is convenient and valuable.

<sup>1</sup> W. James, quoted in R. Pound : *Spirit of the Common Law*, p. 199.

<sup>2</sup> See below, pp. 102 ff.

Public Law is ordinarily divided into Constitutional Law and Administrative Law. The former treats of the agreed procedure by which Interests can try to get the Law altered, and lays down the rights and duties of the principal public officials. There is no sharp line of demarcation between it and Administrative Law, which treats of the rights and duties of the less important public officials in dealing with one another and with non-officials; however, Constitutional Law is dominated by considerations of legislative technique, Administrative Law by considerations of administrative technique. The rights of all officials are secondary and derivative, not an end in themselves; they exist for the purpose of maintaining, applying, and developing the private law rights which have been devised for delimiting the interests of the individual citizens and ensuring their regular co-operation with one another. Thus it is inconvenient and misleading to treat them as altogether on a par with private rights, as is done in England. The fact that an official has been given legal powers to interfere with the rights of a citizen (say to expropriate his land) is never by itself a reason for such interference; on the other hand, the duty of maintaining private rights on the whole is often a reason why the rights of an official should override the rights of some particular individual. (Of course, officials may, and always do, develop an Organized Interest of their own, which has to be respected in the delimitation of rights.)

It is commonly considered that the purpose of Public Law is to define the fundamental liberties of the subject, and the extent to which the public power may lawfully restrict these liberties. But as we have seen, *all* Law and not merely Public Law is a restriction of freedom. All Law is an inducement to act otherwise than you might do if there were no Law. Purely natural freedom would, I suppose, be the power to use one's own natural advan-

tages, e.g. one's natural power of public speech, to further one's own (not necessarily selfish) interests. But merely natural advantages which in no way depend on the legal system are few and fleeting. Property rights are probably founded to a large extent upon natural advantage, but one cannot enjoy extensive property rights without conceding a good deal of power to the state. The owners of such rights cannot complain in the name of freedom if other Interests get control of this far-reaching state power which the property-owners devised, and use it to further their own interests, e.g. their own health and security. Socialistic government means not merely a far-reaching use of the state power, but a use of it to favour certain Interests rather than others—usually to induce property owners to co-operate on terms which under capitalistic Law they would not choose and would not have to choose. Freedom as advocated by liberal-democrats usually means freedom with well-enforced property rights and well-enforced contracts. Freedom of caprice, as opposed to enforced regularity, cannot be an end of government ; freedom as opposed to lawless, arbitrary state power (civil freedom) certainly is ; freedom as opposed to irregularly constituted state power (political freedom) should be an end of government, but under unfavourable circumstances it may prove incompatible with civil freedom, and civil freedom is the more important.

Government—the leader or group of leaders who have to watch circumstances and initiate policy—cannot be completely bound by Law, since its main duty is to adapt and expand the existing law. It may—and indeed must, if it is not to be a despotism—lay down rules of procedure for its various organs and delimit their competence. In Parliamentary democracies, Parliament is one of the chief organs of the Government. The Government must beware of so tying itself down to rules of constitutional procedure that it will be *obliged* to break them, and pass

Acts of Indemnity and the like, which bring the Law into disrepute.

Some will consider this whole chapter irrelevant in a work on political theory. Others, with more justice, will hold that any attempt to sketch a theory of jurisprudence in a single chapter is mistaken and doomed to failure—especially if it is attempted by one who has no legal training. It aims, indeed, only at exhibiting one aspect of jurisprudence—the conceptions in terms of which the political struggle is carried on. For in the modern state, with its “educated” hordes of citizens, the political struggle is largely a struggle of ideologies. And if the lawyers will give us no political theory, the political theorists must trespass into the domain of the Law.<sup>1</sup>

<sup>1</sup> American lawyers however have done a good deal of valuable work on political theory.

## CHAPTER XI

### JUDGES, ARBITRATORS AND ADMINISTRATORS

Denn geendet nach langem, verderblichem Streit  
War die kaiserlose, die schreckliche Zeit,  
Und ein Richter war wieder auf Erden.

SCHILLER

There are judges in Berlin!

*The Miller of Potsdam*

THE difference between a state and any other collection of persons is that in a state there is practically universal agreement between all the citizens, firstly, that all clashes between the interests of different citizens shall be decided by a set of judges agreed on—at least in so far as these clashes can be settled according to certain general principles of Law; secondly, that there shall be powers of moral and physical constraint to ensure that their decisions shall be carried out with the utmost regularity possible in human affairs. It is not inevitable, although at the present time it is normal, that these two functions should both be in the hands of the state. In early Rome the *judex* or judge was in no way a public official, and the same seems to have been the case in ancient Iceland.<sup>1</sup> It is not essential that either arbiters or governors should have been deliberately (legally) constituted; still less is it true that the mere choice of the majority is enough to constitute anyone judge or executive. Both functions require certain natural qualities, in the one

<sup>1</sup> *Encycl. Brit.*, s.v. "Roman Law"; and Pollock: *First Book of Jurisprudence*; pp. 9, 10, and e.g. *Egil's Saga*. I do not here inquire how far Law was in origin religious.



case sympathy, impartiality and skill, in the other the power to command and skill in the economy of power. In earlier times there was seldom any deliberate choice, but a kind of survival of the fittest; those possessing the natural power to command and the natural power to judge on the whole made their way to the front, and the mass of the people welcomed anyone who proved reasonably competent, provided he ruled according to principles which most Interests could acquiesce in as just. Organized power is usually prior in its origin to Law properly so called—it is no use having governors or policemen who are not such by temperament. Again, customary arbitration is usually prior in origin to state Law. But arbitration without executive power is not a satisfactory solution of the social problem; still less is arbitrary power,—there are limits to what men will sacrifice for the sake of regular co-operation. The fundamental reason why the two inherently different functions are usually co-ordinated by Government is, that different types of Law necessitate different degrees of Power for their regular enforcement (according as the Law is extensive or inextensive); it is *useless* making Law without having regard to the available Power<sup>1</sup>; and different Interests, so far as they desire different kinds of Law, have different ideas as to the amount of power that should be placed in the hands of the public officials.

The essence of the Law is that it should be the unchallenged presupposition of regular co-operation between individuals; it was devised so that men could agree to co-operate on a basis of regularity and security. Now when a group of persons find themselves regularly obliged to co-operate with a second group, the members of which have the advantage of special property rights or rights of status, they may find that they continually have to work with them on very disadvantageous terms. E.g. if the possessors of houses or machinery or inventions make full

<sup>1</sup> The real defect of International Law.

use of their legal right to withhold the use of these things, those who require to use them will become sensible of a common interest, and will organize for collective bargaining. If it is possible for all the users, e.g. of houses or machinery, to make a firm agreement among themselves not to co-operate with the house-owners or the inventors except on certain minimum terms satisfactory to them, then evidently the advantage conferred on the owners of those property rights can be very greatly diminished. (But, as we know, this is not normally possible; and the reason is, that if it were, the house-owners or the owners of "intellectual property" would never have succeeded in getting these legal rights conferred on them.) In cases where collective bargaining counteracts the effect of property-rights, this is an indication that the existing property-rights no longer reflect the intrinsic "strength" of the two "parties". One "party", e.g. the manual workers in a certain industry, become able to improve their position by collective bargaining, in spite of the legal advantages of the machine-owners, because the bargaining position in that industry has changed—e.g. there is more fixed capital having to earn interest, or it is of a type which will not "keep" unused, or the workers have obtained a new alternative source of livelihood, e.g. unemployment insurance. Property rights embody a concession which other groups have had to make in the past to a certain group which was in a naturally strong position, for the sake of securing its regular co-operation; successful collective bargaining in spite of property rights shows that the positions have shifted, and the Interest which asserts itself by threatening to withdraw its co-operation has some new elements of natural "strength" in its position.

Now just as it is of the very essence of Contract between individuals that it must ignore changes in their relative bargaining position while the contract lasts, so it is of the

very essence of Law as such to ignore the present bargaining strength of the individuals that are subject to it. The Law must be applied impartially to strong and weak. The Law has, for example, given a man the exclusive use of a bit of land at a time when it was agricultural land, and these property rights were considered necessary to secure his regular co-operation in developing it. When the land is in the middle of a large town or is needed for a railway, and the situation has fundamentally changed, the judge as such must still uphold the same property rights. As we know, extreme insistence on the utmost which the Law awards in such situations is usually unwise, since it normally provokes one or more of three results : (a) a coalition of those injuriously affected prevents the individual reaping in practice the advantage which the Law assigns him ; (b) the courts of Law will do all they can by artificial interpretation to bring the enactments of the past into line with the facts of the present ; (c) the Interests injuriously affected will do everything in their power to get the Law altered. The manner in which the various Interests manage to get their natural bargaining strength sanctioned by the Law, and the extent to which they manage to exploit their legal advantages after the " natural " position on which these were based is changed—these are in my view the most important data of political science.

The most obvious example in our time of these phenomena are the struggles between Capital and Labour, but I am convinced that to suppose that these are the only Interests and that all political struggles are narrowly " economic " is a mistake. The same phenomena can be observed with regard to the position of women ; of subordinate nationalities ; of the Church. The recent " tithe war " in England was the outcome of an attempt by the Church to exploit the legal advantages which it obtained in mediæval times when its natural " strength " was altogether different from what it is now, for the simple reason that the

mass of the people still believed in hell and the priest's power to send them there.

Thus it is fundamental to an understanding of political life that the Judge as such must disregard the actual strength of Interests. Judges undoubtedly have taken this strength into account when deciding for one interpretation or another, but it is generally agreed that they should not have to do so, that it is an offence against what may be called the Technique of Law.

If organized Interests cannot find a satisfactory basis of co-operation in the existing Law, they may and often do try and agree upon an *Arbitrator*. They are likely to do this if the damage to both parties from withholding co-operation is likely to be considerably greater than the advantage either could derive from sticking negatively to its existing legal rights, and hoping for the other to give way. Legal rights were devised to secure regular and willing co-operation; if they lead to frequent deadlocks, this is a sign that they are defective. It is possible to supplement them to a small extent by Arbitration. An Arbitrator cannot annul existing Law, but he can go beyond it; indeed his very appointment signifies that he is intended to go beyond it. In an industrial arbitration, for instance, his business is to find a way in which, *for this particular case only*, the legal rights of the owners and of the workers may be restricted, in order to restore regular co-operation, on principles which both parties can agree to—e.g. the owners agree to a sliding scale of wages and profits—which involves a cut into their normal legal rights—or the workers agree to work with non-union men—a cut into their normal legal rights. Again, arbitration often goes beyond the Law not because of any substantive defect in the Law, but merely because of a defect in the legal procedure permitted; the remedies provided by the Law are too costly or uncertain; this is the ground of

most arbitration in insurance questions or in questions of foreign commerce. Now in actual fact we often find the term "arbitrator" applied to one who is a mere negotiator—a go-between who happens to be convenient in the negotiation of a collective bargain. But a serious sociology must try to define these conceptions more exactly. It appears to me that an arbitrator in the proper sense of the term is one who brings about a settlement not by *any* possible means (e.g. appeal to the fear or the vanity of the opposing leaders, effective as this often is), but according to a *principle*. (This is why in international affairs it is usual to agree first upon a "compromis"—a legally valid treaty setting forth the principles which the arbitrator is to take into consideration.) The Arbitrator, unlike the Judge, has to *find* the principles upon which the particular dispute in question can be settled; but like the judge, he also must *disregard the present bargaining strength* of the two parties, and look only to their "ideologies", which however are connected with their "strength".

This connection between "strength" and "ideology" may be made clearer by an example. Suppose at a certain epoch in a certain country houses are commonly not occupied by their owners, but let to tenants; and suppose that landlords are accustomed to insert restrictive clauses in the leases, prohibiting the tenants from sub-letting their premises, and that the Law hitherto has upheld the landlords. This restriction is unfavourable to tenants, but if they are without capital or credit and the supply of houses is short, they will submit to it. An individual tenant, however, may be in a stronger position as against an individual landlord, and may be able to make things so disagreeable for the landlord—within the four corners of the Law—that this particular landlord will not insist on his full legal rights; the two would bargain on the basis of their actual situation, and might possibly agree for an arbitrator to decide the amount and kind of restriction the landlord

should exercise over his tenant. Now suppose that owing to excessive house-building or improvement in credit-facilities, the position of most tenants becomes stronger, and they no longer fear being turned out. If the landlords try to exercise their legal powers of restriction, a number of things are likely to happen : in the first place, there will be a widespread though unorganized tendency of tenants to make difficulties for landlords by not paying their rents, generally breaking the terms of their leases and forcing the landlords to prosecute them ; this, if it is really widespread, will cause difficulties for the administrative authorities and incline them to try to get the Law changed ; in the second place, it will also incline the judges, when they find a great number of such cases coming before them, to see whether they can " interpret " the existing Law in a manner more favourable to tenants. In the third place, there will be a tendency for the tenants to organize some sort of association, write to the press, hold meetings, search the law for analogies favourable to them, and put forward a tenants' ideology, seeking to persuade people that their landlords' existing right is an undue restriction on the " freedom of the subject ", a " restraint of trade ", " injurious to social welfare " and the like, and so to get the Law changed by Act of Parliament.

In this example we see the three methods by which change in the Law is brought about ; all of them are important. Often the difficulties caused to the administrative authorities are sufficient, since it may be that the Law can be adequately changed by means of a statutory Order of some Minister ; but where this is not the case, individual pressure upon the administrative authorities and organized agitation usually go hand in hand and together bring about a change in the statute Law. And let it not be imagined that this process only applies where parties are contending for " economic " advantage. Suppose that the Law of a certain country at present does not permit individuals to

sing hymns in the public street, and that there are a number of people who feel themselves conscientiously obliged so to sing hymns. As long as they are few and in a weak position vis-à-vis the people who desire the streets to be kept for other purposes, they will at best be tolerated here and there by benevolent policemen and this is all they will expect ; but if a wave of religious fanaticism sweeps the country and they become more numerous and more influential, they will either cause difficulties for the police and administrative authorities, or organize to get the Law changed by developing an ideology based upon "the supreme value of freedom of conscience", or (probably) both. As far as ideologies go, one can always set up "freedom of conscience" as a principle against "freedom from disturbance"; "freedom of trade" against "preservation of amenities"; and so on and so forth. There is no eternal "natural right" that landlords should be free or that tenants should be free, that religious propagandists should be free or that their opponents should be free, that workmen should pay for their injuries or employers pay for them, that parents should vaccinate their children, or children support their parents during unemployment ; the solutions adopted at any time depend on the traditional system of rights, the actual bargaining strength of the opposed groups, and above all else the degree of will shown by individuals to do the best they can for their cause.

Now if any dispute is to go to Arbitration, the parties cannot simply take their stand on their actual bargaining strengths and the damage each could do to the other, but each must, and does, put forward *principles* which lay claim to the recognition of the other—e.g. in an industrial dispute, the owners may put forward the principle of the necessary reward for enterprise, the workers put forward the principle of a living wage. In a certain sense, and in the abstract, both parties are presumed to recognize the

validity of these principles ; such principles are what I term the " ideology " of an Interest. On the basis of these ideologies it is possible that the arbitrator may find some solution which both parties can accept. However, arbitration, which goes beyond the existing Law, as we have seen, usually involves a concession by a party which is stronger at law to another party which is stronger in fact. Its usefulness is limited, because one party or the other will very often prefer to put its strength to the test of what we might call " ultimative action ", by serious " moral " constraint or by physical force. The Arbitrator has no power of physical or moral constraint at his disposal.<sup>1</sup>

The Judge's task is primarily a matter of the logical interpretation of sources, although he requires for it not

<sup>1</sup> The above probably makes too sharp a distinction between the functions of Judge and Arbitrator. In a sense the judge also has to " find " principles—the completeness of the Law is a fiction born of the Judge's duty not to " deny justice ". Again, the arbitrator uses reasoning which is essentially judicial ; he nevertheless goes beyond the Law, and his decision in a sense is even contrary to the Law, as taking away from the parties some freedom of action which the Law in general upholds. Mediator, Arbitrator, Judge—the line between these conceptions is not easy to draw sharply. In my view, the arbitrator judges—whether in intra-national or in international arbitration—according to principles and as far as possible according to *legal* principles. Arbitration, however, is essentially *ad hoc* ; the arbitrator is not concerned with future cases, and he must win the consent of the two parties to his ruling, as he is well aware they may refuse to carry it out. The judge is applying rules which have proved efficacious in the past and hopes that his judgement may prove an efficacious precedent in the future ; also, being backed by state force and not being himself responsible for conserving this force, he does not much care whether his judgement wins the consent of the two parties or not. Diplomacy is " bilateral " conciliation of Interests. Arbitration, though it draws on the common stock of legal reasoning, is primarily bilateral. Judicial settlement is multilateral conciliation of interests with a view to legal consistency and clarity ; it aims to find a ruling which will conciliate all interests of a certain legal category, let us say mortgagors and mortgagees,



merely a mathematical type of intellect, but also a power of what may be called "sympathetic" judgement.<sup>1</sup> In England, and in some other highly developed countries, he does not have to think at all what the consequences to himself of any given decision may be. The Arbitrator, on the other hand, has to consider his power to keep the consent of the parties, and perhaps to maintain confidence in himself for future arbitrations. In a still higher degree, the Administrator has constantly to consider the effect of his decisions on his own position. To be successful he must will to keep control, and must take such decisions as do not overtax his power of maintaining control.

As we saw, Law and Government grow up together out of the germs of Custom and customarily-tolerated Force. It is evident that one man can only rule a large number by making use of their law-abiding habits and sentiments. Without something of the nature of Law there never was Rule; without something of the nature of organized force, there never was Law—but at most mere Custom. Thus the Administrator's only chance of ruling is by means of Law; ninety-nine per cent of the obedience which is shown to his wishes is due to his being a legally constituted authority. He cannot allow respect for Law to be seriously diminished. On the other hand, we shall make a great mistake if we regard him merely as the faithful servant of the Law, anxious simply to enforce it as far as possible, with no ulterior motive; if he were, he could not fulfil his vital function in the community. His primary interest is to maintain his own control, and the maintenance of the Law is merely a means to this end. He is the guardian of Organized Power, and it is his primary function to maintain for as long as possible. Administration is multilateral conciliation, but with a different end in view; the administrator casts a side-long glance at all the other Interests within the community which might be antagonized by any given decision, and make his task more difficult for the future.

<sup>1</sup> Cf. Graham Wallas: *Social Judgement*, *passim*.

tain this intact. He must therefore take account of the *actual* bargaining strength of Interest-groups, as well as their present legal rights. He has certain very limited means of moral and physical constraint at his disposal and must husband and conserve them both for the sake of the social order, and generally speaking, in his own personal interest. Some hold that tanks and artillery have given the modern government a power over its people that governments never possessed before, and explain in this way most of the modern political developments. This may be the case if such weapons are skilfully applied ; but having regard to the vast size and stupendous complexity of the modern state, I doubt whether the modern ruler can find it any easier to enforce his will upon his people than the rulers of simpler and more uniform states did. It must be remembered that physical force can only be used to prevent undesired action ; or, to a very limited extent, to induce desired action by " moral " constraint. But mass action on a vast scale cannot be induced in this way ; and there are many activities indispensable to the modern state which cannot be induced at all. Physical force is of little use as a means to induce the mass of the workers to work—the new device of the political general strike has shown this—or to induce highly-skilled specialists to give their co-operation, as the early history of the Russian Revolution showed.

Administration consists in maintaining oneself in power—and thus incidentally maintaining social co-operation—by an appropriate use of the technique of Law and the technique of command. All administration according to Law involves the administrator being bound to a considerable extent by principles already laid down—involves " government of the living by the dead ", to use a phrase of Bentham's. And this is so for two reasons : In the first place, no one would consent to submit to any and every command of the administrator ; and in the second place

he himself needs to make use of *general* commands addressed to whole categories of people, most of whom will obey him without question, in order that he may save his available force for the few recalcitrants.

But the binding power of established general principles, of "precedent", differs in the case of different agents of the state. The judge as such is supposed to be *wholly* bound by established general principles, whether these are laid down in a code or deduced from previous decisions; his action is supposed to be merely *redressive*, and to consist in merely *re*-establishing rights that have been violated. In a large number of the cases which he decides there can be no doubt as to the legal principle that is applicable; and it must be the ideal of the judge—certainly never realized in practice—that this should always be the case. His whole aim must be to make the established Law clear, consistent and certain. In fact, he usually has discretion to choose between a variety of principles, *prima facie* applicable, and by his choice makes what is (in England, in the case of the superior courts) really new Law. When new facts arise, such as aerial navigation or broadcasting, he may foresee the line that his choices must follow, if he is to maintain his ideal of clear, consistent and certain law; but in this endeavour, even if he is actually guided by considerations of "public policy", he is seldom willing to admit the fact. He may not give way to his personal sense of equity in a particular case, if it means being false to his professional ideal; rather, he must draw the attention of the Government and Parliament to the anomalies of the Law. An administration which saddles the judges with the task of reforming the Law through their "interpretation" of it will get bad Law and undermine confidence in judicial impartiality. We see this occurring in the case of the Supreme Court of the United States, and (perhaps) the Permanent Court of International Justice.

Now, the Administrator, like the Judge, is also bound by

established principles and precedents, but not to the same extent. Some of his work may be regarded as frankly redressive, and consists in deciding whether this or that individual or local body has violated existing Law; such is the quasi-judicial action of Ministers and Ministerial tribunals which is so much discussed nowadays. When a Minister decides whether in fact an insurance doctor, a house-owner, or an unemployed man has violated the Law, and imposes a penalty for its violation, he is clearly acting as a judge.<sup>1</sup> But most of the time he is supposed to be dealing with new situations—unemployment in a “special” area for example or the requirements of national defence—where the requirements and the possibilities of meeting them admittedly change from day to day. It is because Parliament well knows that it cannot foresee these requirements and these possibilities that it entrusts the administrator with discretion. Unlike the judge, he is not greatly hampered by the fiction that the Law foresees everything and provides for every eventuality. He is restricted by the “powers” granted him, but these necessarily and admittedly leave him a field for the exercise of his discretion. He can sometimes even act illegally and nevertheless get his orders obeyed, covering himself afterwards, if the illegality is noticed, by an Act of Indemnity.

But even within the sphere of his discretion, he is by no means free from the bondage of precedent, nor able to judge each question as it arises—let us say, whether this new school should be built or that police-officer promoted—by itself, simply “on its merits”, as we say. In a society of Christians, in which no one ever resisted or made comparisons, a policy of benevolent opportunism, pure and simple, might be possible; it might be possible to say to the individual school-teacher or policeman: “Friend, I do thee no wrong . . . I will give unto this last even as unto thee.” But in the legal state it is not possible.

<sup>1</sup> Cf. Report of Committee on Ministers’ Powers, Cmd. 4060, § III.

Every decision of an administrator is jealously watched, and liable to be regarded as establishing a principle. Innumerable people, though they have no legal right that the same principle shall be followed in an analogous case, nevertheless—trained by the Law—will have a sense of unfairness and cause trouble if it is not followed.

Moreover, there are an increasing number of problems, which—unforeseen by Parliament—cannot be dealt with except by means of a *published* Order or Regulation. Now an Order may be addressed to a smaller or larger category of persons—to the relieving officers of a limited district, or to all users of the highway. It may have every degree of generality, and only the more general Orders are published.<sup>1</sup> The publication of a statutory Order, or an Order in Council, forces the administration to adopt a policy consistent with it, until it is revoked; and Orders of a general character arouse all sorts of expectations on the part of the public, and cannot be revoked too frequently. Moreover, they may be tested by appeal to the Courts, if anyone wishes to contest their compatibility with the Act under which they purport to be made, and (usually) with the rest of the Law.<sup>2</sup>

The fact is, that in the legal state, in which the citizens are accustomed to draw analogies and detect principles, in which men's sense of fairness and unfairness is sharpened, every administrative action may count as a precedent; and it is not easy to remedy one abuse without creating the potentiality of numberless other abuses, or else weakening people's respect for Law through constant changes and many exceptions.

If some section of the people, through dissatisfaction with their legal rights, is creating difficulties for the

<sup>1</sup> Vide W. I. Jennings: *The Law and the Constitution*, p. 13.

<sup>2</sup> Except in the case of the so-called "Henry VIII clause"—Ministers' Powers Report, p. 36.

administration, and the difficulty is *not* one which can be remedied by administrative order, the administrator must have recourse to Parliament. Every administrative Order is a modification of Law, but the administrator cannot by himself escape sufficiently from the net of precedent. In England, Parliament alone can do this, can commit that *supreme illegality*, which is Legislation par excellence. It is the only authority which is wholly unbound by precedent. In every stable state there must be one such authority; this is the truth behind the traditional doctrine of sovereignty. There must be one authority wholly unbound by precedent—or as nearly so as is humanly possible. For Parliament itself is a *legal* authority duly elected by a *legal* electorate, and so it must not use its power of annulling Law so recklessly as to produce a state of complete uncertainty. For in the last resort it is the Law that people obey, and not any particular individual.

Most developed states reserve this power of sovereign, that is, *unfettered* legislation to a representative body. This is presumed to contain representatives of the principal Interest-groups in the country, and their presence in it should give the Administration, which is advocating some important change in the Law, an indication of their attitude towards it, which indication it needs if the change is to work well. For example, let us suppose the Law has hitherto been based on the principle of indoor relief only for able-bodied destitute. The Administration, impressed by the difficulties it is facing in a certain area where unemployment is particularly high, bring in a Bill that the giving of outdoor relief shall be permitted. If the representative assembly is a live one, the debates on the Bill generally reveal how the proposed change will affect other localities, classes and trades in ways which the Administration itself never suspected. A good Administration will not resent having to appeal to a representative body for its major legislation, provided it can generally count on

getting the essentials of its legislative programme through that body. Thus a representative body, which, as in England, is fairly well dominated by the Government, is a useful gauge for the Administration of the actual strength of the various Interest-groups, and of the way they are likely to react to important changes of policy. Is it the mere weight of English tradition, or is it sound good sense, which has led Great Britain in nearly all her Crown Colonies to draw a distinction between Legislative and Executive Ordinance, and to submit the former to some sort of Legislative Council, constituted so as to give voice somehow or other to the principal Interest-groups affected?

The good Administrator, however, will consider the effect of every decision of his not merely on the present, but also on the *future* relative strength of Interests. If his decision leads to the organization of a hitherto unorganized Interest, or strengthens the organization of a weak Interest, he must expect that some time or other it will attempt to exert its collective strength—e.g. he must consider whether a Trade Board regulation will promote trade unions, or a tariff regulation cartels in an industry. Further, if, as in England is becoming the normal practice, he *consults* organized Interests before making administrative decisions, he must realise that he is gradually conferring on these a new strength; membership in them will come to be looked on as a normal way of influencing government and sought for this reason.<sup>1</sup> Further, he must expect that this right to put forward the claims of its members will in time develop into the highest form of recognition—in which membership of an organized Interest-group confers *ipso facto* special legal rights of status on its members. We see these developments in the organization

<sup>1</sup> Such consultation between the Minister and representatives of organized Interests is now required by a great many Acts of Parliament; and does in fact take place in a great many cases in which it is not obligatory.

and recognition of Interests going on before our eyes, but how far our administrators are aware of the effects of their decisions we do not see.

Our attitude to the traditional doctrine of the Separation of Powers should already be clear. Specialization of the functions of Judge and Administrator is necessary, if either is to fulfil his function well ; different types of men are required and different types of procedure. On the other hand, no clear line can be drawn between Administration and Legislation. In cases of minor importance the Administrator acts on his own judgement simply ; in cases of greater importance, he issues an Order after informal consultation with the Interests involved ; in cases where a clear breach with precedent upon a matter of importance is necessary, he acts " by and with the advice and consent of the Lords Spiritual and Temporal and Commons in Parliament assembled ". A *mere* legislator cannot act at all ; he can at best pass resolutions which remain inoperative except in so far as he can find a Government to carry them out.

Separation of Judiciary from Administration may be termed a *necessary deception* which must be practised by any Government that wills to maintain control over a large population. Since obedience is given to the traditional Law, men must be given the impression that the traditional Law is being impartially maintained. The English kings established their power largely by setting up better courts of law, which judged strong and weak with an impartiality hitherto unknown ; and this has been the policy of other strong governments in other countries. In the early days of English Law, when there was no clear and adequate machinery for altering the Law explicitly by Legislation, it had to be developed mainly by judicial interpretation, if it was to remain effective ; in consequence, no attempt was made to disguise the fact that the judges were *the*



*King's* judges and acted under his instructions. Consequently, at this stage, English Law was largely developed by the new forms of Writ issued by the King to his judges ; and by the decisions of the Chancellor as keeper of the King's Conscience.<sup>1</sup> As the machinery for altering the Law openly and explicitly by Legislation developed, such direction of the judges by the administration in the interests of public policy became unnecessary and indeed undesirable ; in James I's reign Coke could assert the absolute supremacy of the judges over Parliament and King ; and later that alliance of lawyers and Parliament could come into being by which each asserted their independence of the Government,<sup>2</sup> and caused Locke and Montesquieu to formulate the doctrine of the Separation of Powers. But the fact is that, without a powerful Administration sufficiently supervising both judges and legislators, the latter are condemned to futile debates and inoperative resolutions, the former to attempt to alter the Law by "interpretation", thereby producing bad Law and weakening public confidence in their impartiality.

<sup>1</sup> Cf. E. Jenks : *Short History of English Law*, pp. 43, 44, 211 ff.

<sup>2</sup> Cf. W. S. Holdsworth ; *Some Lessons of our Legal History*, p. 96.

**PART FOUR**  
**ETHOS**



## CHAPTER XII

### LAW AND ETHOS

Many countries Zarathustra saw, and many peoples ; from many a people he learned to know its standards of Good and Evil. He found no greater power upon earth than the power of Good and Evil. A Chart of Goods and Evils is hung out over every people ; see, it is the chart of their self-conquests ; it is the voice of their Will-to-Power.

Life whispered its secret in my ear : " See," it said, " I am That which must for ever subdue and surpass itself."

NIETZSCHE

WE have arrived at the view of a state as a collection of individuals whose interests are delimited as against one another according to a more or less consistent system of rational principles, through the skill of the Judge ; and seen that this system is continually brought into accordance with changing facts through the skill of the Administrator. It is interesting that, as Pollock points out in his edition of *Maine's Ancient Law*, the two principal legal devices whereby Interests are delimited as against one another, "*status*" and "*estate*", should be derived from the same Latin word. We might add, it is significant that the word "state" itself has the same origin. The term is said to have been popularized in Europe by Bodin, who in the sixteenth century wrote of the "*status reipublicæ*"—"the legal position or condition of a Commonwealth". By "*status reipublicæ*", I take it men meant the actual balance of Interests in any given community, expressing itself in Statuses and Estates. With the new realism that came into thought with the Renaissance it was perceived that this was the most fundamental feature of states.

But is this the sum of the whole matter? We feel that it is not. A good Leader and Governor is something more than a clever administrator. A healthy state is held together by something more than the outward bonds of Law and Organized Power. We have ignored so far the whole factor which we shall call Ethos.<sup>1</sup>

It is worth while, in a methodical attempt to understand the state, to ignore this factor as long as possible and see how far we get without it. Only by this method shall we throw light on the obscure relationship between Ethics and Politics. It is not, the case, for example, that men must be "moral" in order to have a government; still less, that the duties and functions of government and citizens can only be deduced from a "revealed" or a priori system of ethics. If that were so, political theory would be a department of theology or of speculative philosophy, which it plainly is not. The state is an autonomous growth, with laws that must be induced from an observation of its operations, and flourishing under the most diverse systems of ethics.

It is just thinkable that government might exist without there being any ethos—any accepted standards of conduct or feeling of obligation—among its subjects. It seems certain that mankind everywhere prefers to have some known Law that is normally enforced, since this is the only possible basis for regular, foreseeable social co-operation. It seems certain that mankind will always tolerate a government which proves capable of determining and enforcing

<sup>1</sup> By Ethos (ἦθος) I mean not simply customary or traditional behaviour, but only such customs and forms of behaviour as have, at some time or other, been consciously "approved of" as good custom, as what "ought to be"—by an individual if we are speaking of an individual's ethos, by most of a group if we are speaking of group-ethos. Not all social customs are of this kind. Contrast the custom of eating fish on Friday with the custom of driving on the left of the road rather than the right. I think this sense of what ought to be is *sui generis* and not further analysable. I believe Americans use "mores" in this sense.

Law, and always prefers to have some government rather than none. It seems certain that any government, bent on maintaining its own power, will have an interest in upholding a system of known, settled Law, since thereby it makes use of the force of habit and custom to economize its physical force. "Das Recht," says von Ihering,<sup>1</sup> "ist die Politik der Gewalt"—"upholding Law is the only sensible policy for a man who wants to keep power"—and this is true and an important truth. There are three non-ethical motives for obeying Law : fear of punishment ; habit or custom ; and the desire for some sort of peace and quiet—these by themselves will go a long way towards getting the Law generally obeyed. *Pace* Kant, there is nothing at all *irrational* in saying to oneself : "I agree with this regulation on the whole, and will support it whenever it does not inconvenience me ; but when it does, I shall disobey it if I can do so with impunity." A society whose members all accepted the Law with these reservations might not be a very admirable one, but it is thinkable, and a diabolically cunning government might hold it together for a considerable time. There have been periods of degeneration in states when the attitude of the citizens was not far removed from this.

We all feel, however, that such a condition is a degenerate condition. Man is not normally restrained by fear and habit alone. It is certain that men often *deliberately* obey the Law when this is inconvenient to them, and when they could quite well disobey it with impunity—whether because their action will never be known or because the state power is weak and ineffective. This deliberate obedience to the Law as such is only explicable if we admit the existence of Ethos. It implies a conviction that the Law is just, and a will to be just.

The true nature and origin of Ethos has in my judgement

<sup>1</sup> R. v. Ihering : *Zweck im Recht*, Chap. VIII, § II, tr. Husik, *Law as Means to an End*, p. 283.

been best portrayed—although in an enigmatic and paradoxical style—by Friedrich Nietzsche in *Beyond Good and Evil* and *Genealogy of Morals*. Ethos arises as the result of the inherent logic of purposes, which we alluded to above.<sup>1</sup> The formation of an Ethos is the result of a group struggle which has reached the stage of self-consciousness. Every individual grows up in a group—usually within a number of overlapping groups, such as those of family, clan, economic class. As soon as he gets beyond the reign of mere instinct and habit, and realizes himself as an individual, conscious of manifold desires, he realizes too that hardly any of these desires can be satisfied except through the self-maintenance of the group as a group. In Nietzschean language, he realizes that his own will-to-power is bound up with the success or failure of the group as a group. It does not take much experiment to convince the members of a small group in a hard environment that the dissolution of the group, or its failure through internal dissensions, would be their own undoing. Group will-to-power requires group discipline—requires at the very least strongly ingrained habits of endurance, self-control, loyalty and truthfulness as between members of the group.

But further any group will-to-power which has reached the stage of deliberate planning and organization—so that it can properly be called “*will-to-power*”—requires more than trained habit. It requires a conscious insight on the part of its members that such conduct is necessary to their individual existence, to supplement the motives of habit and fear of punishment. This is self-conscious Prudence; it is the germ of the sense of obligation and it produces conduct which might almost be called ethical. But even this is not Ethos, in the true sense of the term.

For Kant was right in thinking that the imperative of Ethos is a “categorical imperative”, wrong however in separating it so sharply from the “hypothetical impera-

<sup>1</sup> p. 68 above.

tives " out of which it has grown. Ethos, in the strict sense, only emerges in a third stage, in which the conduct necessary for the maintenance and power of the group comes to be looked on as the typical characteristic of the group—as a way of life which it is desired to uphold and extend. The means becomes the end. The will-to-power-in-and-through-a-group gradually becomes the will-for-the-greater-power-and-glory-of-a-group which is distinguished from the mass precisely by those standards of conduct which it requires. A collection of human beings thrown together by birth or accident comes to produce individuals whose standards of conduct are similar, and so comes to think of itself as an ethical unity.<sup>1</sup> Thus the few foreign conquerors of a servile population, when they have stood together as a group and not been submerged, have everywhere generated an ethos of " nobility "; and so a word originally indicating racial difference has everywhere come to have an ethical sense.<sup>2</sup> In the same way the priestly group, driven to defend itself against the nobility, who were more powerful in arms, has everywhere generated the specifically priestly ethos of " holiness " or " saintliness," wherewith it has overawed the common folk; the landless mercantile group, the specific ethos of the " merchant-prince "; the craftsman group, a specific " craft-gild " ethos; the scientist, having to defend himself against the priest, the specific " scientist " ethos; in the same way clans and localities, in their struggle with other clans and localities, have developed a specific ethos of their own. And this specific ethos has come to be considered *the* thing worth preserving, worth living for and worth dying for; pride in being a member of the group imposes a sense of obligation which has come to be " *categorical* ". In its unphilosophi-

<sup>1</sup> Though collections of human beings are not all equally capable of creating ethos—see next chapter.

<sup>2</sup> And cf. *generosus* (= of noble birth)—generosity; *gentil-homme*—gentleman.



cal, unreflecting stage this sense of obligation is called a *sense of honour* or of self-respect. It is that which leads to the perpetuation of ethical types of life, often at the cost of the life of the individual, who will rather die than abandon his ideal of holiness or nobility or good workmanship or commercial honesty. Thus all ethos arises from a sense of honour, or "sense for aristocracy", born of group struggle and the will to maintain a way of life. The liberal-democratic theorist, who wishes to assimilate all types, to break down all aristocracy and to eliminate all group-struggle, should at least do so with his eyes open.

It may be well to attempt to interpret the above theory in terms more familiar to English ethical thought.

The great obscurities of ethical theory seem to me to be due to the fact that the term "good" derives its meaning from the successful performance of function, but in a complex and indirect way. The commonest meaning of the word "good" is "useful to somebody"; and yet the good man is not necessarily useful to his neighbours, does not necessarily aim at being useful to them, nor is a good act always expedient, whether for the agent or anyone else.

The term "good" is most naturally and originally applied to *persons*, not to things, qualities or actions. "Courage is good" plainly means "courageous persons are good". "The refusal of More to acknowledge Henry VIII was a good act" means that it was the act of a good man of that time, place and condition. Function is a feature of living beings, not of dead things; "a good knife" means a knife with which I could cut well, if I were so disposed. It is not true, as Professor W. D. Ross asserts,<sup>1</sup> that the adjectival uses of the term "good" (e.g. a good knife, a good cow, a good doctor) are less fundamental than the predicative uses (e.g. truth-telling is good, pleasure is good); as he recognizes, the former

<sup>1</sup> *The Right and the Good*, p. 73. Cf. also p. 63.

expressions are common in ordinary speech, the latter scarcely found outside of philosophical treatises. In my view such phrases as "pleasure is good" (or, "pleasure is a good") mean that it is ordinarily the sign or accompaniment or result of a good man's activities. "Goods" are possible components in a successful plan of life, and there are many possible plans.

It is most unlikely that there should be no common basis of meaning in the different uses of the word "good", as Professor Ross and his school imply. A moral theory which separates "moral goodness" altogether from "competence" is false and dangerous.

It seems to me that all traditional doctrines of ethics which recognize this fact may be divided into two classes. Either they take goods and good states of things to be fundamental, and define personal goodness as achieving or aiming to achieve these; or else they take moral goodness to be fundamental and define a good state of things as that which the morally good man aims at realizing. The former of these views is false, the latter defective. For personal goodness does not consist in moral goodness only, but shows itself in all willed activity. The basic idea in goodness is the power to fulfil functions or satisfy instincts. A good craftsman is not simply one who can produce a commodity that happens to be useful, but one who can do a number of things on many occasions in which he takes delight and finds durable satisfaction. As the Greeks understood, goodness is related to competence. Competence is trained by the requirements of society, but its significance for the individual is not exhausted in producing "goods". A man must be given sufficient opportunity of being *useful*, not for the sake of what he may produce, but for his own inner development. Moral goodness or conscientiousness is a necessary ingredient in competence; yet Kant's good will that never actually achieves anything is not fully good. Goodness is relative

to a personal balance of instincts and is therefore individual; the goodness of one man will differ from that of another. The test of a man's conscientiousness—his will to do what is right as such—lies to some extent in his competence, in his happy creativeness. Competence is on the whole a sign of moral goodness, and moral goodness the chief source of competence. The line between the ethical and the "technical" senses of goodness cannot be sharply drawn. On the contrary, the pre-Christian philosophers must be right in holding that the strictly ethical senses (a good character, a good act) grow out of the technical senses (a good carpenter, a good speech).

Thus the basic idea in "goodness"—the idea common to its various uses—is that of carrying out some complex activity, suited for the well-being of the organism in a certain environment, whenever and wherever it may be required. But we may distinguish four sorts of goodness which grow out of one another, two which are primarily "technical" and two which are primarily "ethical".

The first sort is that of being a good swimmer or a good calculator, and is the power to carry out successfully one sort of complex action whenever this may be required.

The second is that of being a good farmer, a good sailor or a good mother; and is the power of carrying out many different kinds of acts at the appropriate times and places, all of which are co-ordinated by reference to a defining social function. The groups of farmers, sailors, scientists, mothers may be called functional groups; in order that they may fulfil their function, they must be able to impose a complicated rule upon their impulses, and develop a definite way of life. Success is far less a result of mere natural ability, and more a result of persistent will. The defining function, e.g. the abundance of the crops or the health of the child, is the standard by which success in the various activities is judged. Moreover, the defining

function, although in a sense thrust upon the individual by his social environment, is adopted by him as something worth while in itself ; he does not ask himself why anyone should be a farmer or a sailor or a scientist ; it is his life work and that is enough.

The third sort of goodness is that of the good soldier who has never fought a battle, the good proletarian who has never worked in a factory, the good country gentleman who has never owned an estate ; it is the power of carrying out the various activities required by some functional group with whom the individual identifies himself, and depends wholly on the will to maintain a type of life as such. In some cases a man may will to fulfil the defining function of a certain group, yet be prevented by circumstance ; in other cases he may be attached to a certain functional group by sympathy or education. When the technique of a certain craft is well established, we may pronounce a man to be a good craftsman even when he is at the moment unsuccessful ; it is possible for a man to be a good farmer or a good doctor, and yet in a given year to be less successful than someone who is a worse farmer or a worse doctor. Molière's gibe " Un malade ne doit guérir contre les règles " expresses a truth ; a man may be less successful in a certain case precisely *because* he is a good farmer or a good doctor ; procedure which is by all established standards careless and irresponsible nevertheless sometimes pays.

It has often been observed that social classes are not functional groups ; nevertheless they have usually been built up by functional groups. These develop an ethos capable of unifying large tracts of life, and come to include those to whom the defining function is secondary, the group way of life and the will to maintain it primary. One of the most interesting instances of this is European Freemasonry, which developed out of the functional group of the masons ; another, the methods by which the new

states train their boys to have the outlook and the specific virtues of the soldier.

The fourth sort of goodness is that of the good Christian or the good Buddhist; it is the power of doing all the various acts required by the established way of life of a certain group, derived from the will to maintain this way of life as such. Starting out from the nucleus of a functional group of priests, who adapted the sayings of some inspiring teacher to their purpose, these groups have developed a way of life such as to co-ordinate *all* activities and prescribe a duty for every occasion. The maintenance of the "Church" and its way of life is an end in itself and a source of obligation in the various activities of the individual.

Thus the good craftsman is successful in his craft because he carries it on in a certain way and wills to carry it on in a certain way. The good man is a good specimen of a way of life found in long practice to be capable of maintaining itself through the successful performance of various social functions, and is a good specimen because he is *able* to maintain it. Such a way of life cannot be worked out by the single individual, but only by an enduring group.

Every good craftsman has a *technical conscience*. And though this is trained by means of his function in society, it does not rest on an obligation to society, but to himself and the like-minded group of craftsmen which trained him. A good motor mechanic may detest the firm he works for and detest his customer and consider that private motor-cars should be abolished; none the less he will feel obliged to do his job well, because it is his personal mode of creation; he alone can repair a certain defect, and because he can, he ought. A doctor feels an obligation to diagnose an obscure complaint; a scientist to find out the truth upon some obscure subject by himself; no such obligation is felt by the untrained man. So the obligation of the ordinary man to tell the truth and be generous to opponents, the obligation of the Catholic priest to remain

celibate or of the early Christian to go to the lions rather than worship the emperor—all these rest on a trained conviction that they can conduct life happily and fruitfully on that basis. Just as setting up as a motor mechanic is an undertaking to repair anyone's car who calls, so setting up as a Christian is an undertaking to live in a certain way with consistency and without repining.

The most significant acts in a man's life are those in which inclination melts into obligation—acts such as the choice of a profession, the choice of a wife, the choice of a religion, the choice of a domicile, the choice of a political party. The best men choose because they feel obliged by their own inclinations, and knowing that their choice will oblige them in future—will make many actions “wrong for them”, which would otherwise have been “right”. A sense of obligation is akin to the sense of loyalty; a man feels obligation because he has adopted some form of life, which he did not work out himself, but which he believes will be satisfactory for him. The sense of obligation shows itself now in virtuous action towards others, now in technical competence, now in “economic” action; all these kinds of action may be performed with or without a feeling of obligation. (For example, the business man usually feels far more *obligation* to use resources economically than does the ordinary man.) Whether the ethos in which a man believes *is* satisfactory for him can only be proved by results—not indeed by usefulness to others or quantity of pleasure, but by the happy creativeness of his own life as a whole. And this shows itself in the power of an ethical group to maintain itself as a group, in the struggle between groups. The struggle between different ethical groups is the meaning of history.

Clearly the ethos of groups must change. If environment changes very greatly, no amount of will can suffice to maintain the old way of life. Such change will mani-

fest itself either through actions which were ethically indifferent gradually becoming obligatory, as personal cleanliness or fixed retail prices have gradually become obligatory among the Western European peoples; or else through actions which were ethically wrong becoming right. The initiation of such change depends on individuals performing acts which are ethically *revolutionary*, with the intention that they shall become obligatory upon a group—acts such as the aiding of slaves to escape or the refusal to fight for one's country. Such are the epoch-making acts of ethical history; but they cannot be pronounced "right" in the ordinary sense of the word, nor their authors "good". They are experimental; they can at best be called "potentially right", if events prove that the continuation of an existing group or the formation of a new stable ethical group is possible on this basis. Whether it will prove possible, we cannot tell; "we are in the wise gods' hands".<sup>1</sup> It seems, however, as if creative ethical change is only effected by individuals who value the old.

If then there are various types of goodness, each developed by an ethos-forming group, is it impossible for the members of one group to appreciate the virtues developed by the members of another group? And have we ever the right to say that goodness of one sort is better than goodness of another sort? There are goodnesses which we can appreciate, yet feel in no way obliged to imitate. There is, I believe, a sense in which we can say that the goodness of a group which proves most able to use and conserve the goodnesses of other groups is in a way the highest type of goodness. There is a difference in groups in this respect, that some are narrowly interested in the perfection of their own type, while others appreciate and will to conserve types of character very

<sup>1</sup> John Masfield: *Pompey the Great*.

different from their own. They neither desire to imitate nor to be imitated, but are connoisseurs of the different kinds of personal goodness. Only groups of this kind are capable of establishing what we may call stable ethical equilibrium in society. Such a group will encourage the various functional groups to perfect their own way of life; and the Law which it controls will not permit individuals to profit from actions which demoralize their group.<sup>1</sup> It is often easiest to rule by *undermining* the conscientiousness of different groups; a conspicuous instance is the way in which England tried to rule the Roman Catholics of Ireland in the era of the penal laws. It is often difficult, but usually possible, to rule by *encouraging* the ethos of groups of which the government cannot altogether approve, as most Western governments now do with Quakers and Mennonites, making use of them in humanitarian work instead of military service. We said in the last chapter that it was the virtue of the good administrator to seek durable solutions of conflicts of interest; we can now add that the most durable solutions are those which encourage and do not try to disintegrate the various ethos-forming groups. Not every individual whim which masquerades as conscience should be encouraged—that is the liberal-democratic principle—but rather those types of conscience which show signs of proving stable and fruitful.

A sense of Justice is a feature of every ethos, and especially of the ethos of a dominant group, for it is based on a recognition of the usefulness of various types of life. The just man shows a will to live and let live on the basis

<sup>1</sup> An example of this is the use of the doctrine of "public policy" in our Law, to prevent the legalization of acts likely to undermine the ethical sense of particular groups, such as those of peers, employers, married persons, trustees, Members of Parliament or public officials. Cf. Halsbury: *Laws of England*, s.v. "Contract".



of a respect for rights, that is, to ensure and respect the interests which other groups consider to be vital to their way of life. The sense of justice is trained through the enforcement of Law. Instead of simply taking when they can, men are trained to *formulate reasons* why they should be granted what they desire. The litigant must make out his claim that he is one of a category of persons to whom the Law awards certain rights; and this encourages men to make *political* claims for rights which they have not and think they ought to have. "We claim the right to vote because we staffed the hospitals during the war," "we claim a minimum wage because ours is a necessary and a disagreeable and dangerous trade"—such are the political claims of groups. Thus the practice of the Law generates group-ideology, which is an appeal to others to recognize the usefulness of their special function and give them more adequate security.

Justice means treating equally all persons within a defined category, such as employers, policemen, lunatics or aliens. It does not mean treating all categories as if they were of equal importance and worthy to have equal rights. Law only succeeds in winning respect and excluding force through the refinement of the differentiation which it makes between the rights of different classes of persons. Men's estimates of relative importance of different groups to the community will differ, and the Law must be based on the estimation of the dominant group. We must confess that capitalist justice, proletarian justice, agrarian justice, theocratic justice will differ in many respects. But it is the common feature of all Justice that it gladly recognizes the value of various functional groups, and tries to secure to each what it considers necessary for the unimpeded fulfilment of its function.

All government, as we saw, must take account of the actual strength of the various groups, and adjust legal rights to suit changes in relative strength, if it is to maintain the legal order. But the strength of groups depends

mainly on group-pride in a certain specific way of life. A truly aristocratic government welcomes and encourages group pride, tyrannical and democratic governments fear and discourage it.

All post-Christian political theory has postulated that there is one rule of life which is right for all. In order that political theory may become more realistic, it is essential to insist that it take as its datum the *plurality* of different *ethé* which we find in every state. It must be an axiom of all government that men of different race-groups, different religious groups and different functional groups, will feel themselves obliged to act differently, will differ passionately as to what they ought to do. This is most obvious in a state which contains Boers and negroes, English and Indians, Catholics and Protestants, peasants and "megapolitans",<sup>1</sup> but it is true of every state. "In Heaven the perfect round" . . . but "On earth the broken arcs".<sup>2</sup> On earth there is struggle between the exponents of different ways of life, with the various means at their disposal, wealth, organized propaganda, non-co-operation and force.<sup>3</sup> Faced by the fact of the struggle, liberal-democratic theory says: "Let every individual form his own ideas of what is right, and let the Law be neutral"—two demands each as impossible of fulfilment as the other. Authoritarian-aristocratic theory says: "Let Law be the expression of the ethos of some group fitted by nature for dominance; it will encourage other groups to form their own ethos and the struggle between them will be based on mutual respect. A state is best off when it has a dominant aristocracy worth rising into and worth rebelling against".

<sup>1</sup> = "big-town dwellers" (Spengler).

<sup>2</sup> R. Browning: *Abt Vogler*.

<sup>3</sup> I do not see that it is *invariably* better that men should use their accumulated endowments or their control of the press, but not their physical strength. The good man uses (a) no means that are incompatible with (b) the least objectionable means that are sufficient for, the achievement of his purposes.

## CHAPTER XIII

### THE METAPHYSICAL SIGNIFICANCE OF ETHOS AND GOVERNMENT<sup>1</sup>

There is a young black ouzel, now building her nest  
Under the Rosemary on the wall, suspiciously  
Shunning my observation as I sit in the porch . . .  
Could we discourse together, and wer I to ask for-why  
She is making such pother with thatt rubbishy straw  
Her answer would be surely : " I know not, but I MUST.

BRIDGES

**I**F there is no universal standard of goodness, if the word "good" never means anything except "good of a type" or "good for the maintenance of a type",—a goodness valued by those who conform to that type, but not necessarily by others—how can there be any sense in asking whether a government is "good" or "bad"? And yet, as we saw in Chapter III, there is a real sense in this question. Those of us who were at old-fashioned schools used to have to learn long lists of the kings of Israel and Judah, and learn which were the good and which were the bad kings—classified certainly according to a very Jewish-theocratic standard of goodness.

It has been suggested hitherto that the function of Government is to maintain law-abiding social co-operation, by the appropriate use of Law and Organized Force; but this, though perfectly true, is not enough. "Order reigns in Warsaw"—the famous dispatch of the Tsarist government after its bloody suppressal of a Polish revolt—is a symbol to us of a very bad kind of order. "Order"

<sup>1</sup> Those who dislike unpractical speculations can omit this chapter.

and "popularity" of government are somehow bound up together; that is one of the truths behind democratic theory. In the short run, we may say, government's task is to maintain order; in the long run, its "goodness" and its "order" depend on its ability to keep alive the springs of natural ability, voluntary effort, and voluntary self-discipline in its subjects; and these latter are *ethical* qualities. Just as there are many kinds of eye, but the "good" human eye is one adapted to the maintenance of the human type; so there are many kinds of order and regularity, but the "good" kind of order is one adapted to the ethical nature of man.

The only answer we can give to the question: "What is a good government?" is the metaphysical one: A good government is one that maintains and fosters many ethical groups, and promotes a harmony between the ethos of groups and the natural types of the persons who constitute them. Whether it is doing this is not obvious at first sight, but can only be judged by the increase or decrease in the vitality and spiritual unity of the various groups under its control. Is it evoking or stifling the natural talents of the people, is it harnessing them to common purposes or letting them be frittered away in petty frictions and discontents? It is not the function of government—as some socialistic politicians seem to think—to be universal provider to a passive people; but to stimulate them to provide for themselves in ways that will evoke as much natural talent and as much natural energy as possible. This forces us to consider the question of the relation between *Conventional Ethos* and *Natural Type*. Hitherto we have treated ethos as if it were the mere subjective conviction of the members of a group that a certain way of life is best for them—as if any group could form any ethos, and as if all groups were equally important in this respect. Now in spite of the immense difficulty of the subject, we are forced to look deeper

and try to discover the metaphysical implications of ethos and government.

I do not believe the present state of political crisis everywhere is primarily due to changes in economic organization; I think it is much more due to rapid and insufficiently co-ordinated changes that have taken place in men's views as to the ultimate basis of ethics. We see two traditional philosophies contending with one another for the mastery at the present time, with profound effects on politics. Each philosophy is to be found in an optimistic and a pessimistic form. Each of them, in my judgement, is dangerously false.

On the one hand, we have the view that there is an immutable and absolute code of right conduct, and that government is good or bad according as it does or does not conform to this. This code is *either* intuited by everyone as self-evident—the optimistic view of eighteenth-century rationalism, with its “natural Law”; *or* else it is conceived as laid down by a transcendent God and revealed through a book (Judaism, Protestant Christianity), apart from which the ordinary man would be unable to know it—the pessimistic view of Karl Barth and Dostoevsky's Grand Inquisitor. One of these two versions is still held by very many people. As an ethical doctrine, it has been labelled Deontological Ethics (from τὸ δέον, duty). Its political consequences are: on the optimistic version, where each man is supposed to know what is right equally with every other, *political anarchism*; on the pessimistic version, where no one knows what is right except those to whom it has been “revealed”, *theocracy*, or government by the appointed guardians and interpreters of the “revelation”. And history shows that these consequences do in fact result wherever this doctrine has been widely held.

On the other hand we have the democratic and Marxian view, which, originated I suppose by the Utilitarians, has

come into prominence since the beginning of last century until it has become a very serious rival of the other. This view holds that there are *no* immutable principles of conduct, but that every individual has his own particular likes and dislikes, and tries to get as much satisfaction for himself as possible. The only principles of conduct are rules which have been found generally useful for obtaining maximum satisfaction. One of these rules apparently is, that we should aim at the greatest happiness of the majority.

The chief difference between the Liberal-democrats and the Marxians is that the former are optimists and believe that there is some pre-established harmony such that the individual by always seeking his own happiness will always promote the greatest happiness of the majority, or else that the individual, by always seeking the greatest happiness of the majority, will always promote his own greatest happiness, or both; while the Marxians are pessimists and believe that the harmony needs to be established through a forcible dictatorship of the proletariat, who are usually also the majority. But for both it is axiomatic that the end of the state is to provide the greatest satisfaction for the majority, and that each individual is to be sole judge of what happens to give him satisfaction. The political consequences of this view are: *laissez-faire* democracy, or forcible dictatorship of the proletariat.

Besides these two views, there is the view of life which since Nietzsche has been coming to the front—or coming back to the front, for it was in the main the view of the Greeks<sup>1</sup>—which has been called Value Ethics. On this view there are no universal principles of right conduct

<sup>1</sup> Plato certainly thought that there were immutable principles of conduct, but unlike Kant, did not think they were the same for all types. What was right for the soldier-type was not right for the artisan-type or for the philosopher-type. And I believe he also thought that some of these ethical types could only be found among men of the Hellenic race-group—Aristotle certainly

revealed or unrevealed; but neither are the likes and dislikes of individuals all of equal importance, either for themselves or for others. They are the outcome of specific urges ("instincts") in man, through which Nature leads him to realize the possibilities of his specific type. The likes and dislikes of an individual must be interpreted, to determine what is really of value for him—what kinds of conduct he can effectively will, and what will durably satisfy him. Ethics studies the possibility of the realization of values, and is based on a philosophical interpretation of emotional reactions. Just as the individual, by comparing his own emotional reactions to different kinds of natural and depicted forms, draws conclusions as to what is "really significant", "really beautiful"; so by reflecting upon his own emotional reactions to different kinds of conduct, he draws conclusions as to what is really worth while for him to aim at in life. Their likes and dislikes can be considered as *signs* of the immanent laws of their natural type.

There are Real Natural Types. This fact seems so self-evident to the unsophisticated man as to be scarcely worth stating. The unsophisticated man knows quite well that an acorn, though it may never grow up at all, will certainly not grow up into a beech-tree, and believes this to be due to the law of its species. None the less, many scientists when treating of sub-human nature ignore the fact that there are real types, and treat their apparent existence as if simply due to arbitrary, subjective classifications which tell us nothing about the real causation of things. Many

did. So far Plato was thoroughly un-Christian. But he was also un-modern in believing that only a fixed and immutable number of natural types existed. He also thought that the philosopher-king, understanding all types *sub specie æternitatis*, would give them all their due. But we cannot and should not wait passively for the philosopher-king to appear.

more scientists,<sup>1</sup> being anxious for political reasons to deny the reality and importance of Race, admit the existence of real, causative, Specific Type in the realm of sub-human life, but deny that it exists in the realm of human life. We are here exclusively concerned with the latter. But the situation is similar in both realms. In both we are confronted with an inexhaustible variety of living forms, often shading into one another through almost infinite degrees of transition. In his classification of this welter of life, the individual thinker has to show his judgement, and often there may seem little to choose between rival classifications of some newly-discovered border-line form. But this does not imply that all classifications are equally "true" or "significant". There are good classifications and bad classifications. A good classification tells us something about the necessary behaviour of the living beings classified, and above all, about their heredity; a bad classification tells us little or nothing. In the sphere of human life there is inheritance of physical and mental characters, and there is also "inheritance" of ethos, institutions, traditions. A good classification will reveal, a bad classification will obscure the way in which these two sorts of inheritance work.

"Genus", "species", "family" are words to indicate real similarity of type in a number of individuals in respect of their power to transmit bodily and mental characteristics to their progeny. These terms indicate something not directly observable (but inferred from observation of the behaviour of past generations), and something hypothetical—a power they will exhibit if they have progeny and if their natural type (genotype) is not masked by the natural type of their mate. Moreover, if a number of individuals

<sup>1</sup> Notably J. S. Huxley in Huxley and Haddon : *We Europeans*. In my opinion the second half of this book, on the empirically-found distinctions between the racial types of Man, e.g., the blood-groups, is sufficient refutation of the first, propagandist half.



exhibit the same feature, let us say long heads, we can never be sure that this is due to inherited natural type; it may be due to a "traditional" effect of environment—e.g. a custom of binding the heads of babies—upon individuals of utterly different natural types. Thus natural type can only be inferred, and above all we must recognize that it is a matter of degree. Close affinities of natural type may be easily recognized, remoter affinities only with difficulty. Some natural types show themselves only when many different conditions concur to make the environment favourable to their appearance; others seem to show themselves with remarkable frequency in spite of great variations of environment. These latter are the more obvious natural types which the ordinary man is inclined to regard as real species and real races.

The clearest indication of natural type is to be found in the *appearing together* in many different generations and many different environments of a number of different features or characteristics, which might have been expected to vary independently of one another—such as shape of head, type of hair, and type of skin. The more we find such collocations of different features turning up together generation after generation in a family, or found together in most of the individuals of a locality, the more we are inclined to regard them as evidence of hereditary natural type. Exactly how many of the characteristics of each individual are due to heredity we can never be sure, under the conditions which obtain in the human realm. We cannot breed "pure lines", as geneticists do with peas and fruit-flies, thus determining exactly what collocation of qualities is hereditary, and which qualities are due to the chances of environment; generalizations about human affairs are only "true for the most part". But because our knowledge about them is inexact, we should not be led to deny the plain evidence of our eyes. On the contrary, we see the same assemblages of different features

recurring with such regularity in families and local groups that everyone in practice recognizes hereditary racial types and family types, and makes some sort of classification of them.

To attempt to answer the question, "What is a Species?" would be going altogether beyond the scope of this book. Here we are only concerned with human natural types. The most obvious difference between human racial types and sub-human species is that the former, however much they differ from one another, never diverge so much as to be incapable of fertile breeding with one another. As far as we know, every type of man is capable of breeding with every other type. This fact makes human types far less stable than animal species. Human types can emerge, display a considerable degree of stability, and be submerged again through indiscriminate breeding; nevertheless there are human types which show a good deal of stability over large stretches of space and time. These are what are commonly called Races, and they include sub-types corresponding to tribes and families, which are in their turn recognizable and stable in varying degrees.

Nor is there the least reason to suppose that psychical characteristics are not inherited in the same way as physical ones. To deny this is to fly in the face of all common experience. We constantly find particular talents, e.g. musical ability, running in families and clans; and above all we find the same collocations of mental qualities and of mental and physical qualities recurring together. Further, in view of the researches of the physiologists, who are every month discovering some new correlation between temperament and bodily structure—especially the functioning of our glands—any theory which made physical qualities inheritable but not psychical qualities must seem in the highest degree improbable. Certainly the difficulty of discovering exactly which qualities are inherited is very

great, and that for two reasons : In the first place, it is very hard to say what are the independently variable units of mental quality ; can we say, for example, that irascibility is a unit-quality or " character " corresponding, for example, to " eye-colour " among the physical qualities ? In the second place, Tradition evidently plays an even bigger part in shaping psychical characters than it does in shaping physical characters. The subject is exceedingly complex, and cannot be seriously discussed apart from a consideration of the mechanism of sexual inheritance, which would clearly be out of place here. It is a subject on which both more research and more philosophical reflection is urgently needed. But the difficulty of framing precise statements and drawing positive conclusions should not lead us to deny the plain fact that there are inheritable natural types, and that these may include both physical and psychical characteristics.<sup>1</sup>

A natural type, whether in the sub-human or in the human realm, exhibits itself in a kind of Conservatism in the way of life of many individuals, over a stretch of space and time. The will-to-live manifests itself in terms of a certain kind of life-cycle only ; the herbivorous animal will not eat other animals even at a time of great food shortage ; it will not mate with *any* other animal with which connection might be physically possible, but only with others of its own type. This lack of adaptability often leads to the destruction of the individual, while preserving the unity of the species. In general, an animal

<sup>1</sup> In terms of the " gene-theory ", natural types must be thought of as due to a certain " stickiness " of the genes. We must conceive that the presence of some genes favours the manifestation of some and prevents the manifestation of others. Something of this sort seems to be generally admitted. But, so far as a non-biologist can judge, it may well be that the chromosomes are not the *only* vehicle of heredity ; this issue does not seem to have been finally and completely settled. Cf. E. S. Russell : *The Interpretation of Development and Heredity*, who thinks that the heredity of specific type is mainly carried by the cytoplasm.

will adapt its environment to its way of life, e.g. by migration, rather adapt its way of life to its environment; and the economy of Nature is such that it is *able* to do so over large tracts of time.

Why should Nature proceed by the evolution of such relatively rigid types? We do not know. To me it is the most striking fact about the world of Life, sub-human and human. The way of life of the sub-human species is clearly what corresponds to human ethos,—the *typical* way of satisfying one's needs that is proper to some human type. Every animal needs food, drink, sleep, sexual satisfaction, defence against its enemies—and satisfies these needs in typical ways, though there is often no obvious physical reason why it should not adopt other ways. Some animals for instance defend themselves through their power to run, others through their power to fight, others through their power to hide, others again by their power to withdraw into a shell of defensive armour. We might,—if allowed to indulge our fancy for a moment,—imagine that an antelope who should stand at bay and resist an enemy would suffer severe social disapproval from his antelope tribe; while the same would be the case with a tiger who constantly ran away! The existence of species requires a certain differentiation along these lines; e.g. the existence of exclusively carnivorous species is only made possible through these *regularly* being able to find herbivorous species for their prey. The struggle for life might have been one in which every individual used every possible method; and we do find such a struggle between the different individuals of the species, where greater adaptability than the average favours survival. But evolution, generally speaking, proceeds by the specialization of species along fairly rigid lines and selection of *species*, and this is made possible by a certain economy of the jungle, whereby every specialized individual preys on and is preyed on by others equally specialized. Moreover, some

species appear to have a greater influence over the vital economy of a certain region than others ; it is on this fact that the biological destruction of pests, through the introduction of new species calculated to influence the economy of the region decisively, depends. The most clearly Dominant Species, which, wherever it gains sufficient numbers and power, transforms the whole economy of the region to suit itself, exterminating whole species and breeding others, is of course that of *Homo Sapiens*.

Thus throughout the world of living Nature we find inherited types and an equilibrium of instincts which preserves the type. The tortoise does not need the indignation of his fellow-tortoises to make him retire into his shell. In man the adjustment of his impulses is mainly brought about by reason and will. He has however the help of *Tradition*, significant words and ceremonies whereby an ethos necessary for the preservation of a type may be handed down. In the case of Man the formative influence of social Tradition seems, generally speaking, to be stronger than that of heredity.<sup>1</sup> But because we admit the importance of Tradition as an explanation of the binding power of ethos, we should not therefore deny the influence of inherited natural constitution, physical and psychical. On the contrary, it seems to me certain that both influences exist, and are linked together, although loosely and mysteriously. It seems to me certain that inherited natural type creates ethos, and that traditional ethos reacts upon the inheritance of natural type. We have to try to envisage more clearly the nature of the linkage between them.

In the first place, if we consider merely the primary needs of any species,—food, progeny and defence,—we shall often find a rough correlation between changes in the biological requirements of a given community, and changes in its traditional ethos. It is precisely these matters, viz.

<sup>1</sup> Cf. Carr-Saunders : *The Population Problem*, p. 482, and Chap. XXI.

the manner of breeding and rearing children, the manner of fighting, and the manner of acquiring the means of livelihood, which every traditional ethos without exception has at all times regulated. Further, it is precisely in respect of these matters that we find very marked *changes* of ethos, from age to age and from community to community. One of the most clearly established results of recent sociological research is that at all times among peoples who have achieved any degree of civilisation the net fertility of the community has been regulated by ethos.<sup>1</sup> The preservation of a Type is *not* furthered by the production of the greatest possible number of children; the number of children has to be brought into a right relation to the available means of feeding and of defending them. Excessive child-bearing merely wears out the mothers, who in a primitive society are apt to do most of the economic work. What work is allotted by the traditional ethos to men, and what work to women is highly important for the survival of a type; the allotting of much work to men is apt to weaken the defensive organization, the allotting of much work to women to weaken the child-bearing and child-rearing organization. In proportion as many new techniques of production are developed, in some of which weakly and defective specimens can be usefully employed and are therefore on the whole more of an asset than a liability, so humanitarian sentiment, requiring the preservation of *any* sort of life at any cost, begins to dominate the traditional ethos. Again, the attitude of the ethos to war is of paramount importance, and extremely significant in its changes. Every historical community seems to have gone through a "heroic"

<sup>1</sup> Carr-Saunders : *op. cit.*, Chap. XI. (He calls them the "historical" peoples). Among the means adopted may be mentioned abortion, infanticide, late marriage, and mechanical birth control, as well as others more subtle and indirect. R. A. Fisher : *The Genetical Theory of Natural Selection*, has clearly traced the secular changes of European ethos in this respect.

stage,<sup>1</sup> in which personal valour in war was prized, even where it involved great loss and disadvantage to the community—it is never suggested in the *Iliad* for example that it was irresponsible of the chiefs to involve their kingdoms in a ten years' war all for the sake of a girl. But the heroic ethos provides a certain security in defence at the cost of the economic strength which can only come from peace and settled conditions ; such economic reserves are needed for any long and arduous war. Whence the "heroic" ethos seems to be but a passing stage—which may however become requisite again at a later date, when circumstances and the capacities of the people have changed—so Plato, long after the heroic age of Greece, when her states had become wealthy and accustomed to rely on mercenaries, urged the training of his Guardians to be like "tough and wiry dogs". The supreme sub-human analogy to human traditional ethos is afforded by the bees, who maintain their specific type by constant adjustment, through differential feeding, of the number of queens, drones and workers.

Thus in a general way it seems to me incontestable that the function of ethos is to preserve specific type ; and that this is its inner meaning and solemnity.

But *only* in a general way. The reader of any book on social anthropology or the history of morals cannot fail to be struck by the wealth of practices felt to be obligatory at some time or other, which really cannot possibly be conceived to further the survival of a type in any way whatever. Inge, for example, concludes his account of the ascetic ethos of the Egyptian Christians of the fourth century with the remark : "Collective mania . . . could go no further."<sup>2</sup> To explain the degree of correlation which is actually found to obtain between traditional

<sup>1</sup> Cf. H. M. Chadwick : *The Heroic Age*, Chap. XIX, esp. pp. 445, 462.

<sup>2</sup> W. R. Inge : *Christian Ethics and Modern Problems*, p. 145.

ethos and survival-value-for-a-type, we need to make a distinction between Dominant and Servient Types—types which create ethos and types which accept it.<sup>1</sup> Apart from this distinction, social tradition is as little intelligible as was physical heredity before the distinction was made between Dominant and Recessive characters.

Any traditional ethos is thus, in our view, ultimately the product of some group whose members really are similar in their hereditary constitution, and which was evolved to further the survival of that natural type. But it does not follow that the group which developed the ethos is the group which now practises it. For traditions persist after the group which created them has dissolved.

Not every chance collection of men can create a traditional ethos, a way of life felt to be obligatory upon the members of the group. Only a group whose members are of very similar natural constitution and are aware of the fact can do so. Such have been everywhere the dominant aristocracies who have invented and imposed ethos. This consciousness is well expressed in the term in which some of the Greek aristocrats described themselves: "We, the genuine specimens".<sup>2</sup> Now this similarity of natural type among members of a group can evidently arise in two different ways: Either they may be of similar natural type because they are closely related within a relatively small group which has been inbreeding for generations. Or they may not be at all nearly related by blood, but yet drawn together into one self-conscious group by some institution, for example a profession or a religion, which has the power of attracting men of similar natural type. The former might be called Natural Groups by Inheritance,

<sup>1</sup> The ethos of a dominant type is what Nietzsche called Herrenmoral, that of a servient type Sklavenmoral. *Beyond Good and Evil*, tr. Zimmern, p. 227.

<sup>2</sup> Nietzsche: *Beyond Good and Evil*, tr. Zimmern, p. 228. (I doubt whether Nietzsche's interpretation of the Greek word is correct).



the latter Natural Groups by Institution. Again, both factors may have been at work as where men of the same clan commonly adopt the same profession; and if they have, this will greatly conduce to the self-consciousness of the group. The Greek, Roman, Jewish and Teuton aristocracies, who have made our European life what it is, were formed by both these factors; they belonged to a limited number of inbreeding families and commonly adopted the same occupation.

From the viewpoint of history, a Dominant Type is one which prescribes ethos for men of other types, and gets it adopted—for it is one thing to issue orders and another, far harder, to start traditions. From the viewpoint of metaphysics, a Dominant Type is one which, conscious of its inner unity, wills to conserve this by conserving other types, whose regular co-operation it needs in order to preserve its own. Dominant Types prevent the human race from sinking into a struggle of all against all by any methods available, a struggle in which all types would disappear. Nietzsche well expresses the feeling of every ethical aristocracy bent on preserving its type: "We shudder at the degenerate individual who says to himself 'Everything for me!'"

Yet those who belong to a dominant type are not philanthropists; they favour such types as are useful for the preservation of their own. Thus men of a "white" race who have got control of a tropical colony will develop and conserve the black races who alone can do heavy manual work in the tropics; a practical race like the ancient Romans favoured the technically more proficient race of the Greeks and conserved their type, instead of either exterminating them or forcing them into the Roman mould; a warlike aristocracy requires good merchants and good craftsmen, a priestly aristocracy requires good soldiers, an aristocracy of factory-workers—should this prove capable of dominance—requires good engineers and

good farmers. Men of a dominant type everywhere prescribe to those of other types standards of conduct that are useful for the preservation of their own type; the priest in societies in which he is dominant needs brave soldiers, the merchant industrious workmen. And a traditional ethos, once formed, persists.

There is great difference in efficacy between the ethos which is original and harmonizes the instincts of the individual because it corresponds with his inner constitution, and one which has been imposed by institutions. Still, *mere Tradition may ultimately have biological effects*, and this is its metaphysical significance. If by means of Law and Propaganda I impose a western-European ethos upon a certain African tribe, it may be expected that the individuals who will be most successful and produce most children under the new régime will not be those who would have been most successful under the old. In the same way if I impose certain standards of conduct upon members of a profession, e.g. commercial honesty, those individuals who will succeed under the new rules will tend to be different from those who would have succeeded under the old. If there is any tendency, which there often is, for the profession to form a class and intermarry with one another, it may well be in both these cases that in the course of time the prevailing natural type within the group will change into conformity with the ethos. That this is possible seems to be demonstrated by the fact of caste, in which hereditary physical type and hereditary mental aptitude for a profession go together. Thus it may be possible for a dominant type actually to form new natural types. It may well be that the racial type of the modern Jew which is now remaking Palestine and challenging the most powerful states has been largely formed by the institutions imposed on him through long ages by Roman and Teutonic rulers.

Thus the born Leader and Governor will feel himself

to be a representative of a group which has a distinctive group-ethos and believes this ethos to be founded upon a real similarity of natural type, which it wills to preserve. If he wills to do the best he can for "Britain", his view of "Britain" will necessarily be that of the group in which he was brought up. For a large and heterogeneous body like the modern nation cannot to any great extent be based on real similarity of natural type. The English nation was largely invented by the English kings in their struggle with the Popes, just as some Alemannic nobles and patricians invented Switzerland and some Hussite heretics invented Czecho-Slovakia. It is to my mind certain that no modern nation is racially homogeneous or anything like it, but equally certain that no nation has ever been formed except by a *predominant racial type*, and that the character of the different national cultures is due to the fact that natural types numerous in one may be rare in another. In every state there are bound to be many different groups, each with its own ethos, and many natural types; the natural leader rules according to the inner necessities of his *own* type, whether that be English or Indian, Czech or German, peasant or soldier or priest. Outwardly his function appears to be simply the maintenance of Law, and of regular co-operation on the basis of Law; the inner significance of this function is, that only such regularity makes possible the conservation, testing and formation of groups with a common ethos, and ultimately, of fresh natural types. No state worth the name can be formed except by a relatively small group, with a marked ethos of its own based on real affinity of natural type, which wills to dominate and form the rest.

The above account of the correlation of group-ethos and hereditary natural type is not very clear. My belief is that it cannot be clear in the present state of our knowledge. Far more research is necessary into the mechanism

of the inheritance of natural type; the propagation of standards of conduct from one class-group or race-group to another; and the effects of changes in ethos upon the inheritance of natural types. I can only suggest that any adequate theory has to fit the following facts:

That there are *ethé*, standards of conduct felt to be obligatory; and that each ethos is not just a conglomeration of different rules but a unitary way of life which has arisen at a certain time and place;

That the individual, when he subordinates his impulse of the moment to his sense of obligation, does not feel that he is simply doing what his ancestors taught him, but that he is acting according to the inner necessities of his own nature—that right choice is beneficial to him and wrong choice disastrous;

That the individual often feels a tension between the requirements of the traditional group-ethos and the requirements of his own nature;

That he is happiest and most creative if he lives in a group whose ethos is appropriate to his own natural constitution;

That none the less it is better to live in a group whose ethos is not entirely appropriate to him than in one which has none at all; it is better that there should be a struggle for dominance between groups, each of which has developed a marked ethos, than a mere struggle for life between individuals who have no ethos at all. For example, it is better to be a native in a state dominated by a white aristocracy, or a German in a state dominated by a Czech aristocracy, or a worker in a state dominated by a landed aristocracy—provided each of these is in fact a true ethical aristocracy—than to live in the democratic equalitarian state described by de Tocqueville in which every individual is an isolated fragment without traditions and without pride, “*aiguilonné sans cesse par la crainte de descendre et l’ardeur de monter*.”<sup>1</sup>

<sup>1</sup> de Tocqueville: *L’Ancien Régime. Avant-Propos*.

The difference between the aristocratic man and the liberal man is that the former appreciates types which he does not wish to imitate, and does not wish that they should imitate him.

The theory set forth in this chapter, which indeed is fundamental to our whole view of government, may perhaps be made clear in the following way: Let us imagine we are founding an Utopia, and are in the possession of absolute knowledge and absolute power,—which should we prefer to establish, a society of hereditary castes, each with a well-marked ethical way of life perfectly appropriate to the inherited capacities and temperament of its members, or a society in which every individual was absolutely free to struggle or co-operate with any other in any way he might think fit, unrestrained by any ethical tradition? In my view, since admittedly capacities and temperament are partly inherited, and since life without traditional ethos is intolerable, there can be no doubt about the answer. In such a caste society, based on complete knowledge and complete control of breed and of tradition (as Plato pictured it), deliberate adjustment of tradition to heredity and vice versa would produce maximum happiness and maximum efficiency. No one supposes that individual character is completely determined by heredity; but neither is any individual's behaviour completely determined by tradition, owing to the strange fact of human freedom—our ethos does not compel us, as if we were bees or ants, but merely influences us—it is an “ought” not a “must”. We *are* influenced by heredity and we *need to be* influenced by tradition; it seems to me most foolish for the sake of “freedom of the individual” to deny the former and try to abolish the latter; we should try to prevent conflict between the two influences. A society of absolutely rigid castes is clearly undesirable,<sup>1</sup> but so in my

<sup>1</sup> I must emphasize that I am not advocating a society of rigid castes in practice—for one thing, because it is far too unadaptable

view is a society in which there are no marked ethical traditions, in which the rule "Each for himself and the devil take the hindmost" prevails. It is better in my judgement to aim at a golden mean between the two, to aim deliberately to conserve racial, national, professional and family types, for it is easy to lose and not so easy to rebuild these. But I frankly admit I cannot *demonstrate* that it is "better".

Anyhow, whether it is "better" or not, we should observe that the evolution of mankind has in fact proceeded through a *selection of types*, just as sub-human evolution has proceeded by the selection of species, and not simply by a struggle of all against all with all means available. Imperialism cannot be understood except as the will of one type to dominate another, thereby developing the other type, and making it conscious of itself and its own virtues. Neither Roman nor English Imperialism was ever simply the sporadic economic exploitation of the members of one race-group by the members of another, without foresight and without law. Such a policy could never have produced the Union of South Africa or the Indian federation. The real justification of Imperialism, as of all aristocracy, is that it takes a diamond to cut a diamond. The Indian upper classes, if they prove capable of ousting the British and ruling a united India themselves, will have been made so by British rule. The English landed aristocracy of the eighteenth century made the very different governing class, the Peels and Gladstones of the nineteenth; not an abstract desire for equality, but the pride and belief in themselves of the new

in face of great and violent changes in the environment. It is a purely theoretical conception to illustrate what would be desirable if (a) man were completely controlled by heredity and tradition, (b) the statesman had a completely isolated state, (c) the statesman controlled the non-human environment, e.g. climate and bacteria, completely. What I advocate in practice is a half-way house between this and the Liberal ideal of "freedom".

upper-middle class, brought in the Victorian era with its greatness and its defects. It is hypocrisy to say that a dominant aristocracy or an imperial Power rules simply in the interests of the governed ; it does its best for the governed in so far as this is compatible with its own predominance. And in doing so it will probably create in time among the governed many good subordinate types, and some aristocratic groups capable of wresting the power from it and moulding the state themselves. Whether any of the servient types will in the end assert itself against the dominant type depends on the natural constitution of each.

The cardinal virtue of an aristocracy is to know when to surrender. Every surrender of privileges is a mortgaging of the future ; will make it more difficult for it to maintain its own type under the new conditions ; yet sometimes a policy of *reculer pour mieux sauter* is plainly desirable. The vital question is whether it will lose its sense of unity and its belief in itself and be absorbed and dominated by some other type. It is fascinating, for example, to consider whether England should have surrendered to Ireland or India in the post-war years, whether the opponents of women's suffrage should have surrendered to the women, whether the Trade Union leaders who dominated the English government in 1933 should have surrendered to the City. Such questions belong to the theory of revolutions and rebellions, whereby the relative power of the great Interest-groups in the state is suddenly and fundamentally changed. This book confines itself to an attempt to explain the more humdrum and everyday processes of politics, whereby a government, at times when the existing social equilibrium of power is not seriously threatened, maintains regular law-abiding co-operation by suitable adjustment of the Law.

Every aristocracy has in time degenerated and passed away, but this does not invalidate our belief that every

good government must be aristocratic. Only a group which believes in the value of its own way of life and is determined to maintain it can make other groups feel the value of theirs. It does not aim to have all possible advantages or even all possible virtues, but those only which are appropriate to its way of life. "Excudent alii spirantem mollius aera. . . ." <sup>1</sup> Consequently it will need other types and value them for their specific virtues. It will spread the conviction that the national ethos fulfils itself in many ethical types—the good factory-worker, the good farmer, the good healer, the good researcher, the good soldier, the good wife—in a multi-national state, also the good Scotsman and the good Welshman. It will create a sense of local and professional "aristocracy", even at the risk that this in the end may threaten its own predominance.

Possibly it is the inner significance of revolutions and rebellions, that—since the successful organization of an armed rebellion or revolution involves many of the virtues of an aristocracy—they may be the means of directly replacing one dominant group by another, without the interregnum of democracy or tyranny which usually occurs. <sup>2</sup>

Not every group which achieves predominance in a state is capable of forming an ethical aristocracy. For this to be possible, the group must have a strong ethos of its own, and—if my belief is correct—this must be based on real similarity of inherited natural type. It must realize that it is different and be proud of the fact; this

<sup>1</sup> "Let *others* beat out more delicately the breathing bronze . . ." (Vergil: Aeneid, Bk. VI. 847—a Roman imperialist writing of the Greeks.)

<sup>2</sup> Some revolutions however appear to be due to a mere breakdown of government, without any conscious attempt of any particular group to seize power. They merely thrust an old aristocracy into the melting-pot, out of which in time a new aristocracy may arise.



is the secret of an imperial race or an aristocratic class. Our analysis of the different sorts of group in Chapter VI will make it clear that it cannot be of the simple Partnership-type—the type of group that is based on mere mutual economic advantage. Hitherto it has seemed as if an aristocracy could only be a kinship-group of families who were closely related. But this is not certain. If it is possible, by means of suitable institutions, to draw together men of similar natural type into a group with a marked common ethos, and eventually to encourage them to breed with one another, it may be possible to form a new ethical aristocracy. This is what the new states are attempting.<sup>1</sup>

Some people seem to imagine that an aristocracy can be created by drawing the most capable individuals of all sorts into the government service—the principle of “*carrière ouverte aux talents*”. Excellent as this principle is, it must be clear that such a government service in no way fulfils the function of an ethical aristocracy. We do not deny that democracy may get good leaders and efficient civil servants, and that a leader may maintain law-abiding co-operation with great success by playing off individuals and groups against one another, in the style of a Napoleon or a Cavour. But only a leader with a true aristocracy behind him can bring about an orderly development of various ethical groups, on a basis of mutual respect, thereby promoting that coincidence of conventional ethos and natural type which is the metaphysical significance of government.

I conceive the stream of life in the human individual as running upon three different levels, and his actions as explicable through the interaction of three different fac-

<sup>1</sup> This is the point of, for example, Nordic propaganda. Cf. Günther: *Kleine Rassenkunde des deutschen Volks*, Chap. IX.

tors. The deepest level is that of the mere succession of wants and satisfactions, which starts at birth and continues without interruption till death. Superimposed on this is the level of simple will-to-power; this emerges with the consciousness of oneself as an enduring individual, and shows itself in a will so to mould the environment as to be not merely the slave, but to some extent the master of one's wants and satisfactions. At the highest level the individual becomes conscious of himself as a specimen of a natural type with an appropriate ethos, and wills to maintain and extend the influence of his type. The will to live according to a certain ethos cannot be built up except on the basis of a will to power; it is in fact will-to-power that has been trained by a self-conscious group; all true ethos is based on pride. Again, the will-to-power cannot be built up except on the desire to ensure satisfaction of recurring wants; "power" at first means no more than "ability to provide satisfactions"—though it comes to mean much more than this, and to be sought for its own sake. Thus the life of the developed individual is an equilibrium based on the operation of three factors; in proportion as the "higher" factors are developed, it becomes a *stable* equilibrium, not easily upset by ordinary changes in the environment.

In society there is a similar equilibrium. The Social Equilibrium may be looked on as the resultant of three equilibria, the economic, the legal-political, and the ethical equilibria. For many purposes it is legitimate and useful to study the economic equilibrium by itself, to see how the interaction of producers and consumers in the market provides a more or less stable arrangement for the mutual satisfaction of needs. In fact, there would be very little stability in this arrangement, were it not for the legal and ethical equilibria of the given society—enforced Law and recognized standards of conduct. Moreover, an established economic equilibrium is always liable to be upset through

legal or ethical changes. But since changes in law and ethos are as a rule less rapid than changes in the other conditions of supply and demand, we can usefully abstract from them, and treat purely economic problems by purely economic methods.

In the same way we can treat the legal, or legal-political, equilibrium in abstraction from the economic and ethical equilibria. The legal-political equilibrium assigns to every member of the society rights which are fairly well-known and stable and regularly enforced. This equilibrium is an equilibrium between groups, and is established through the will of a government to maintain power over numerous subjects by means of Law. It is always liable to be upset by big changes in economic conditions, e.g. in the technique of production, as well as by changes in the ethical equilibrium; but for many purposes we can usefully abstract from these changes and consider the legal-political equilibrium by itself. We can treat the maintenance of legal order as if it were an end which everyone desires unconditionally, and study the various ways in which, by legal and political action, equilibrium is disturbed and re-established.

Finally, we can consider the ethical equilibrium which results from the will of a certain self-conscious group with a strong ethos of its own—a nobility or a priesthood—to mould the customs and institutions of a society according to its ideas of what is right, and thus maintain itself as a dominant group. In my judgement, it is only where such an ethical equilibrium is established that we are justified in speaking of a collection of men as “a society”. Such a dominant group encourages the formation of other ethical groups (sects, subordinate nationalities, subordinate classes), but it has the will to keep them subordinate; there is a “prevailing”, generally accepted standard of conduct throughout the community. An ethical equilibrium can gradually degenerate into ethical anarchy,

when everyone does what is right in his own eyes ; or it can be deliberately overthrown, and another equilibrium established, based on the dominance of a different group, as when one Church is replaced by another, one race by another, one class by another, as the dominant group in the given society ; this is the true meaning of the word " revolution ". Here again, it is useful to study the ethical equilibrium by itself ; to trace the groups that formed the present " prevailing " ethos of a given society ; to estimate its hold over different sections of the people ; to examine the rival *ethé* of subordinate groups that have developed a marked type of their own, and estimate their chances of establishing a new ethical equilibrium, should the present one be upset. But what seems a " higher " type of ethos may give way to a " lower ", simply because the exponents of the former are wiped out by a famine or exterminated through political ineptitude.

Thus the ethical equilibrium is bound up with the other two ; such is the seamless web of life. It seems to me that Life only establishes a considerable degree of stability in the short run at the cost of ultimate radical change in the long run ; and yet that this stability in the short run is worth while. But I cannot demand that others shall agree with me.

## CHAPTER XIV

### STATE AND CHURCH

Once Zarathustra pointed, and said to his pupils. "Those are Priests. Though they are my enemies, pass them by in peace, with slumbering sword. They have their heroes, too. They are my kindred, and I will honour my kind even in them."

NIETZSCHE

The prophets prophesy falsely, and the priests bear rule by their means.

*Jeremiah V. 31.*

THE state as guardian of Law and law-abiding co-operation must have an ethos, that is, the government must consciously seek to form and promote ethos. The liberal-democratic idea of the ethically-neutral state is a monstrosity, incompatible with the nature of Law. An ethos is built up; it cannot suddenly be altered by majority vote. It is not possible for a government to operate a law which it considers immoral, even if the majority of the governed approve of that law, as was shown by the attitude of the English government to sati (widow-burning), in India.<sup>1</sup> On the other hand, the power of the state to form an ethos will be relatively weak compared to other groups, because it is so comprehensive; the other narrower groupings will have a much more powerful effect over their members. And it is the task of the Dominant Group to find a highest common factor,

<sup>1</sup> Nor can it, of course, by law suddenly abolish a custom to which people are really attached—witness the question of child-marriage in that country. In fact, the governing class has gradually made its own ethos prevail in respect of sati; it believed it could make its law effective and events have justified it. It has not hitherto had the same success in respect of child-marriage.

capable of upholding the values of the other groups. Its adjustments are tentative and experimental, yet it must try to induce in its subjects the conviction that the values it recognizes are not due to personal likes and dislikes of the governors, but grounded in the nature of things.

Now religion is a claim that the values recognized by the religious person are grounded in the nature of things, a claim that by realizing them he is fulfilling the will of God. Religion properly so-called involves a subjective certainty on the part of individuals as to what is their duty, a certainty that their true happiness depends on their doing it. It is necessarily based on beliefs about the nature of the world. But these, while accepted by the individual, are never originated by him; they have been taught by a religious leader,<sup>1</sup> and are kept alive and propagated by a religious group. Such a group necessarily tends to form an ethos, and it is only from this point of view that government must take notice of it. For government is not interested in people's beliefs as such, but only in so far as they affect action.

It might be thought that the government could best accomplish its purposes by itself creating and maintaining a new state religion to its own taste, since a religious group is a powerful creator of ethos, and religion is capable of attaching supernatural sanctity to Law. This ideal seems to be a false one, for three reasons: (1) The good governor is not in general a religious leader. The religious leader is inspired by the *metaphysical* urge to proclaim what seems to him the truth regardless of consequences; the good governor is inspired by the *practical* urge of "compassion for the multitude"—to get the most effective harmony out of the mass of conflicting interests and prejudices. (2) The religious leader is concerned with inward goodness

<sup>1</sup> Every religion recognizes *charismatic* leaders—to use Max Weber's excellent word (from *χάρισμα*, divine favour or grace). Max Weber: *Wirtschaft und Gesellschaft*, 1. Teil, S. 124.

of character—"the heart being right in the sight of God"; the good governor is concerned in the main with outward goodness of action, which he must secure to some extent by force. Force has no place in religion. (3) The religious leader must trust primarily in the providence of God; the good governor must trust primarily in the will and foresight of man. (I do not mean that these two attitudes are mutually exclusive, but there is an important difference of emphasis.)

It is essential for government to realize that religions grow and cannot be made to order. Government seems to be faced with two alternatives, either alliance with some one existing religion, or equal indifference to all the religions which confront it. Either policy has its difficulties.

On the one hand, the government which professes to be "purely secular" and indifferent to religion is *either* deceiving itself, *or* else it is paving the way for the ethical and cultural anarchy of liberal-democracy. What a man believes matters; belief affects action. The good government cannot tolerate the notion that beliefs are unimportant, or that they are merely matters of individual taste, so that the only criterion of their truth is the counting of heads. The former is the viewpoint of materialism, the latter that of scepticism or agnosticism. Religions are necessarily better or worse, beneficial or harmful, from the point of view of a government which has the welfare of its people at heart.

On the other hand, if government allies itself with one of the existing religions, it is limited to the religions which are actually available. It is clear that there are many religions with which a good government cannot possibly ally itself, because their teachings stultify its educational policy, its health policy, or its demographic policy. From the point of view of government, the most important distinction between the religions is whether they are

priestly or non-priestly, tolerant or intolerant. Intolerant religions are those which cannot recognize any truth in any other religion except their own, and aim to suppress other religions when they get the opportunity. Priestly religions are those with a specially trained, full-time class of professional priests. Priestly religions tend to be intolerant, but are not necessarily so ; many forms of Buddhism and Hinduism for example are said to be priestly, but tolerant.

A close alliance between the state and an intolerant religion is bound to impoverish the spiritual life of the state by suppressing valuable elements which the religious leaders dislike. The state is the widest form of human association that we know at present, embracing many and various ethical types. A one-religion state is easy to rule, but it is liable to die of spiritual inanition.

Close alliance between the state and a priestly religion means at best a priestly, at worst a priest-ridden government. At best we have the divine king of ancient Babylon, pre-war Russia, Japan, or the "godly prince" of the Lutheran and Anglican conceptions ; at worst we have the theocracy of the high Middle Ages or the Presbyterian ministers of Geneva and Scotland. But, for the reasons suggested above, a good governor will not usually be of the priestly type, and the identification of these two functions has always brought very grave evils in its train. It has everywhere undermined either religion or government or both. Either the government becomes too sacred to fulfil governmental functions, and is supplanted by a Shogun or Mayor of the Palace ; or it gets under the thumb of the priesthood ; or it secularizes and officializes the priestly hierarchy to such an extent that the religious impulse is driven underground and driven to take on bizarre and anti-social forms. As for theocracy—the political rule of a priestly caste—it would seem to be the worst of all aristocratic governments, though better than the cultural anarchy of unmitigated liberal—democracy. The priest



at his best is akin to the philosopher ; he wants to spread the knowledge of what he believes to be the most important and ultimate truths, though in a symbolic form ; the prostitution of his gospel for the sake of power, the abuse of man's instinct of wonder and worship, the rule of men by means of ghostly terrors—this is priestcraft and the worst evil that can befall a society.

The greatest good fortune for a state is to have at its disposal a tolerant, non-priestly religion, which is capable of functioning as the official state religion, of giving its consecration to the solemn acts of state, satisfying the religious aspirations of the ordinary man, and helping to mould his ethos. Such was the state religion of Greece, Rome, and the Teutonic tribes ; such, it seems, is the Shinto religion of Japan. It is clear that such a religion will not satisfy the religious zealot or the man who is a mystic by temperament ; but it can leave room for unofficial religious bodies of all kinds to flourish by its side, each probably making their unconscious contribution to it. The state must keep a watchful eye upon all religious bodies ; but it should be realized that, provided they do not actively counteract the ethos inculcated by the government, or incite to breaches of the law, they are a source of strength to it. But any religion which teaches *Extra ecclesiam nulla salus* must be discouraged by the good governor with all the varying means at his command, since he is the divine instrument of the concrescence of groups and classes on the basis of mutual respect. The Law is necessarily either favourable or unfavourable to a Church ; it cannot be neutral. But there is a great difference between legal discouragement and arbitrary persecution.

If he has no such tolerant, non-priestly religion to hand, his best hope is to try to reform one of the existing ones. And this need not be impossible. All religions change considerably in the course of time. It is not true that religion abhors syncretism ; religions, like natural species,

tend to converge as well as to diverge—to grow towards as well as away from one another. The greatest religions, e.g. Christianity in its heyday, have been syncretions; Christianity emerged as the result of the growing together of many diverse Semitic and Greek elements. What is true is that only a syncretion which has taken place through an inward struggle of religious-minded men produces stable and fruitful types. Religion abhors a rationalistic mixture. Any stable state religion must be a true syncretion and not a mixture.

Ever since the three great intolerant religions—Judaism, Christianity and Mahommedanism—came on the scene, there has been a latent conflict between government and priestly class. It could not be otherwise, since the claims of each are *of their essence* "totalitarian". The conflict was less acute so long as the activities of the state were confined to the narrow sphere of defence and police; as soon as the sphere of the state began to enlarge in the nineteenth century, the liberal pretence of the ethically neutral state was set up, to mitigate the conflict. But this pretence has now become quite threadbare; the government as guardian of the Law and of the human resources of the nation cannot possibly be indifferent as to what is inculcated into the young minds of its citizens. If doctrines are preached which lead its citizens to grow up improvident, cowardly, unhealthy, lazy, untruthful, stupid, cruel, hating their fellow-citizens of different religion, how can government maintain an attitude of neutrality? In our day the state is coming back into its own, into the fulness of functions which it had in pre-Christian Europe; a struggle cannot be avoided, wherever there is still life in the Church. But good government will realize the limitations of force, and will fight ideology with ideology.



**PART FIVE**  
**CONSTITUTION**



## CHAPTER XV

### GOVERNMENT, GOVERNING CLASS, AND GOVERNMENT SERVANTS

Many a one—notably Kant—by his moral life and teaching is simply saying to us : “ The best thing about me is that I know how to obey.”

NIETZSCHE

A STABLE system of government is doubly hierarchical—it has to be built up from below and down from above. Both of these hierarchical orders are based upon trust and confidence between man and man, and both may be said to be based on representation ; the government may be said to “ represent ” its supporters in the country, and its officials in the provinces may be said to “ represent ” it. Yet what confusions of thought underlie this word “ representation ” ! It is in consequence of this that Representative Democracy has never been able to put forward a theory of representation which even attempts to answer the difficulties of this conception. I shall try to show that all liberal-democratic theory muddles up the two different relationships of Agency and Subordination, which are characteristic of the upward hierarchy and the downward hierarchy respectively, and tries to explain them both in terms of Contract, the only relationship between man and man which it understands, and which is fundamentally inapplicable to either.

Here again Jurisprudence, representing the accumulated experience of many centuries and peoples, may help us to find our way through the confusions. It distinguishes the Servant, who is without responsibility of his own because he may be presumed to be under his master’s control ; the

contractual Agent who from self-interest freely contracts to carry out this or that task on behalf of his Principal, usually for a remuneration ; and the Mandatory, who, without any kind of contract or being in any way controlled may yet be presumed to have a community of interest with someone other than himself, and to be determined in his action by this common interest. Each of these relationships is so different in its effect upon men's actions, that the Law—which only reflects the fundamental necessities of things—has been driven to attribute to each of them different rights and duties both in respect of the person benefited or injured and also in respect of third parties. (Of course the different systems of Law recognize for their purposes many sub-relations and cross-relations ; but these seem to me the most interesting sociologically.)

(1) Now the nature of things is such that no government worthy of the name can be the *servant* of the electorate or of elected representatives. This would mean that the representatives have the whip hand of it, are actually able to turn it out at any time whether it likes or not, and that this state of affairs normally determines its actions. If this were so, it would not be the government. (2) But neither is it true that the government *contracts* or bargains with the representatives to govern on certain conditions and at a certain remuneration, as if either could sue the other at law for a breach of the contract. In the first place, without government no law is operative ; and in the second place the government may be able to violate all the most fundamental laws that existed when it came into power and still remain respected and authoritative. In times of real crisis everyone admits that it will be its *duty* to violate the Law.<sup>1</sup> But neither are the concepts of Contractual Agency or of Master and Servant applicable to any of the principal officials of government who hold really responsible office. The soldier even, though he may be paid, emphatically

<sup>1</sup> See above, p. 89.

does not "save the sum of things for pay";<sup>1</sup> still less does anyone govern because he is paid to—unless it were the American "city manager" who is definitely hired to govern.<sup>2</sup> This is all part of the individualistic "economic" ideology of Liberal-Democracy.

Thus both in the upbuilding of government from the bottom and in the downbuilding of government from the top, the relationship between all the important stages is of the mandatory type—good officials and good representatives fulfil their respective functions neither because they are compelled nor because they have contracted to, but because they feel a common interest with those they represent.

But the right relationship is a different one on the two sides of the hierarchy. To count on their intelligent and willing co-operation, a Governor must have the confidence of his subordinates; and a Spokesman must have the confidence of the group whose wishes he represents. None the less the relationship is different, and *the qualities of character which make a good spokesman are different from those which make a good governor*. The confusion between the two is the cardinal error of liberal-democratic theory; it is simply not true that free men only obey someone they themselves have voted for. On the contrary, men only elect a ruler *as a measure of despair*, in the last resort, when there is nobody marked out either by custom or by obviously superior ability to lead them. This is the case in armies, in exploring expeditions, in political parties, in economic associations, in games. The subordinates in an army or in an administrative machine can never form a solid Interest-group, all advocating the same policy (except in respect of their status as soldiers or officials, which has nothing to do with their political function); but they must

<sup>1</sup> A. E. Housman: *Last Poems*; "Epitaph on an Army of Mercenaries," p. 71.

<sup>2</sup> For all its alleged efficiency, this form of city government seems definitely repugnant to Europeans.



all co-operate. If they have confidence in their leader, this is not because he carries out their wishes, nor because they voted for him, but for quite other qualities in his make-up, e.g. technical ability, firmness, justice and sympathy. The spokesman of an Interest-group, on the other hand, wins the confidence of his "constituents" if he presses their point of view accurately, courageously and obstinately. Everyone knows that the same persons do not usually excel as spokesmen and as administrators. Even democrats generally admit that government of their constituencies by individual elected deputies is the worst possible form of government; it only occurs in times of extreme decay of the state. Government is an *enterprise*; and an enterprise cannot be carried on by men who are by nature spokesmen.

For decent government it is absolutely essential that the upward hierarchy should be entirely separated from the downward hierarchy, both to avoid the corruption and demagogy which results from their intermingling, and also to secure good administration and good representation. On the upward side it is essential that the government should command the confidence—not of the majority of the people counted by heads—but of all or nearly all the vital Interests in the nation; if not, it will sooner or later be paralysed. It must therefore be in touch with representative spokesmen of all the important Interests in the country, whether these are aligned on a local, professional, racial or religious basis. These spokesmen are primarily there to agitate for the fulfilment of various wishes of the Interest-group which they represent. But these wishes may be altogether destructive of government. Consequently, the apparent conflict of duties in the representative has been the theme of many writers from Burke to the present day. If group-spokesmen are permitted to agitate for the interests of their group without a thought for the necessities of government, this will mean the end of stable

and law-abiding co-operation. They must be inspired by a positive will to maintain the existing form of government in its main lines—to reform it without breaking it down. They must be somehow trained to act as a “Governing Class”.

The term “governing class” is not an altogether happy one, since it suggests economic and social implications, but it is not easy to find a better. It is Signor Mussolini’s term (*classe dirigente*), and in fact describes what the modern states are trying to form out of their governing parties. “Law is an alliance of the far-sighted and penetrating against the short-sighted” (Ihering).<sup>1</sup> Spokesmen of Interests who merely want to agitate and threaten without the responsibility of finding workable compromises ought to be excluded from all influence and denied publicity as far as possible.<sup>2</sup> In Parliamentary countries we see all too often the dishonourable methods of the Interests which do not have to support the government, as well as of those which think they have got the government in their pocket for a term of years. The representative who merely voices the demands of his Interest without the trouble of attempting to work it into a practicable government policy can well be dispensed with. The vague aspirations of the man in the street are not unimportant, but there are other ways of eliciting them. The governing class must have a proved will to maintain the existing social equilibrium in its main lines, and must feel its existence as a governing class bound

<sup>1</sup> “*Bündnis der Weitsichtigen und Einsichtigen*,” *op. cit.*, Chap. VIII, § 15, tr. Husik, *op. cit.*, p. 420.

<sup>2</sup> The statement that they “ought to be” frankly expresses a belief of the writer. He believes that others, who already believe in the value of law-abiding social co-operation, might, after reflection upon the facts, come to share the same belief. Questions of value are questions of belief—or of appreciating reflection upon the facts. All one can do is to point to certain facts, which one’s opponents may not have noticed or reflected upon, and see whether they change their beliefs. Men of strong will will not change their beliefs easily, and it is they who change the world.

up with this general form of government.<sup>1</sup> It probably will not have to *choose* its leader—he will probably be marked out for it by events. But he must have its confidence, and through it the confidence of all or nearly all the important Interests which it represents. He is their spokesman <sup>2</sup> who has to find a policy that will carry them with him; he is not their subordinate, neither are they his. If he uses his authority over them as citizens to cow them as representatives, he will soon find his position weakening. They are the guardians of the state, not its instruments, and should be kept altogether independent of the administrative and military machinery of the state, though *retired* officials will play a prominent part in the governing class, as in ancient Rome. It is undesirable that it should become rigidly hereditary, though perhaps it may have a tendency to become so. It must however supply the training in public affairs that all hereditary governing classes in the past have given their sons. It is still more undesirable

<sup>1</sup> What are “the main lines”, the “general form” of a government? The business of Legislation is to commit “sovereign illegalities” (cf. p. 105), but these must not be so frequent or so radical that they undermine the whole basis of respect for Law. To uphold this I call “upholding the form of government in its main lines.” There will always be disputes in respect of borderline cases, but some conceptions are so vital to a system of Law that the attempt to abolish them is clearly revolutionary. Such are, in a modern Western state, the abolition of all property rights, the abolition of representation, a general abolition of the right of public meeting or of open religious worship—also, in a state in which the Law has hitherto been based on one predominant national ethos, the demand that it should forthwith be based upon another. I confess I cannot define revolutionary policy any better than “the advocacy of very widespread and sudden changes in existing rights.” But its revolutionary character depends not only on the radical nature of the proposed changes, but also on the rapidity with which it is proposed to carry them through.

<sup>2</sup> The one or the few members of the government who “make policy” in the highest sense, are “spokesmen of spokesmen” (to adapt Thucydides’ phrase) *as well as* being “rulers of rulers”. What is disastrous is the general confusion of the two hierarchies; this is the Syndicalist and Guild Socialist error.

that it should represent one economic Interest exclusively. Interests that find themselves in opposition to the present government's policy or personnel must be induced to try to convert the ruling class, instead of trying to overthrow the state machinery or obstruct it till it dies of inanition—unless, indeed, they are conscious of a power and a mission to replace the ruling class by revolution. To this end they must feel that they have a fair chance of getting spokesmen into the various organizations representative. It does not seem to me absolutely essential that such spokesmen should be elected; but if they are, they must be elected by “natural” groups, and groups small enough to be able to judge of the true calibre of their spokesman.

The fact that all governing classes in the past have in time degenerated and roused a revolutionary opposition is no argument against the contention that such a class always has been and still is vitally necessary for the well-being of a state. The idea has become unfamiliar to us because we are so wrapped up in our own little moment of history. It is my belief that an element of aristocracy is a necessity in all stable states, and the *raison d'être* of the new states is that they are attempting to supply this need. They are *Popular Aristocracies*—popular in respect of the social provenance of the governing class, aristocracies in respect of its political privilege and ethical unity. Like all historical aristocracies, our Normans, for instance, they have won their position by force, and consolidated it by character-training. An “elective aristocracy” is a *contradictio in adjecto*.

On the downward side of the hierarchy of government, we again find a double relationship, a *prima facie* conflict of duties. A large percentage of any bureaucracy and of any army will probably serve “for pay” without conviction or personal loyalty; but it is impossible for any stable administration to be built up exclusively upon this type. The ideal of a bureaucracy which serves all governments

and carries out all possible policies indifferently is a monstrosity of the liberal-democratic state ; in any state where this is alleged to be the case, we may conclude that the bureaucracy has largely become the real masters of the nominal governments. But in a normal condition of affairs the key men in the administration must be personally attached to the government, and must know how to win the confidence of their subordinates. These two requirements may, on the face of it, conflict, and do conflict, with tragic results ; but it is precisely the confidence in the character of his superior which makes a man believe that he will not have to act towards his own subordinates against his own better judgement. Equally necessary is the leader's confidence in the character and judgement of his subordinates ; they must act towards one another as " rulers of rulers ".<sup>1</sup> This does not, however, imply agreement as to political dogma, and is quite different from the voter's confidence in his chosen spokesman.

If government is to be anything more than a personal autocracy, compromise between the interests—or Integration of Opinion, as it has been called—must be achieved somewhere. There would seem to be *three* systems of representation claiming attention : the Parliament consisting of *many party* groups ; the *two-party* Parliament traditional in England, the United States and the Dominions ; and the *one-party* system of the new continental states. Let us examine these. (1) It seems almost certain that the members of a many-group Parliament cannot form a governing class in the sense we have used the word, with a real will to compromise for the sake of maintaining the state. It is quite thinkable that such a governing class could be formed if Parliament were elected for a much longer term, or if only people possessing certain special qualifications were eligible for it ; but

<sup>1</sup> Thucydides' description of the spirit of Spartan discipline. *Histories*, Book V, Chap. 66.

neither of these alternatives seems likely to be adopted at the present time. (2) The two-party system, under which each of the parties undertook to maintain the King's Government in turn, thrust upon each party in turn the task of finding a practicable compromise between the various Interests supporting it. Moreover, even up to the War it is remarkable to what an extent the two parties in England formed one governing class, maintaining the same "rules of the game", consulting one another on questions of foreign policy, and recruiting themselves to a considerable extent from the same families.

The two-party system is often, over large areas, indistinguishable in practice from the one-party system. Thus, in perhaps one-half of the states of the American Union, everybody knows that only a Democrat (or only a Republican) has the slightest chance of being elected. Again in Ulster, only a Unionist or only a Nationalist. The real issue is, *what sort* of Democrat or Republican is to be elected; and this is decided in the party primaries. Similarly in England there are many seats which are absolutely "safe Labour" or "safe Conservative". It seems to me this is the inevitable result of highly organized parties, and is one reason why the one-party state was evolved.

The great question at issue between the two-party and the one-party systems seems to be this: If an Interest is dissatisfied with the policy of the government, *should it be encouraged to try and turn the government out, or to convert the existing government to its views?* It seems to me that there is very much to be said on both sides.

On the one hand, even if change of government is easy and in no way endangers the form of the state or the authority of its Law, still it will probably be admitted that there are certain disadvantages in frequent change of government, especially in the field of foreign policy. Again, the danger of unscrupulous, merely destructive criticism cannot be ignored; the parties develop into great

fighting organizations whose sole *raison d'être* is to get the other party out; the caucuses in the country will not feel the obligations which a governing class must feel; it is much more difficult to develop a common ethos in a governing class.

On the other hand, it may well be urged that there are times when it is absolutely imperative that a corrupt or hopelessly inefficient government should be turned out at all costs; that our system provides a recognized alternative and accustoms people to making the change peacefully and harmlessly. (To which our opponents might rejoin that this is "making the medicine of government its daily bread".) Further it may be said that regular and open criticism is necessary to any government; and that our system brings this criticism into the open where, in the case of a one-party system, it would be hushed up; that it avoids the ever-present danger of back-stairs influence. Further, that it is a good thing to give new men frequent opportunities for showing what they can do. My belief is, that each country must use the system which is best adapted to its tradition and character, but that each system must be played according to the "rules of the game" if it is to be successful. I should be inclined to add, that if a revolutionary situation is once allowed to develop, that is, if once the government is captured by one single economic or religious Interest and used ruthlessly to suppress all its opponents for ever, then the one-party system is the only one which can gradually restore healthy conditions. What starts as a revolutionary or counter-revolutionary party will probably in time broaden out into an aristocratic governing class.<sup>1</sup>

<sup>1</sup> My personal belief is, that it may still be possible, and perhaps desirable, to try to revive the spirit of the two-party system in England. But long-continued National Government is contrary to the spirit of this system and must inevitably end in its downfall. Those who desire National Government to continue should realize this, and work to build up a party of the new type. You cannot build up a Government on the assumption that the Labour Party is revolutionary, and expect it not to behave as such.

## CHAPTER XVI

### CONSTITUTIONS

The Ephesians cast out Hermodorus, the most valuable man they had, saying : " We will have no one who is better than the average ; if he must be, let him go and be so elsewhere, among another people."

HERACLITUS

**W**E saw that the tasks of good government were : to rule according to settled Law ; to adapt the Law in time to suit the changing relative importance of the different Interest-groups ; to educate groups that are aggrieved by the present state of the Law to appeal to reason, not to force ; to encourage ethos-forming groups and promote a national ethos which will mitigate the conflicts between them ; and to husband the human and material resources of the people. If these are the tasks of government, which of the current constitutional devices will be likely to ensure that it fulfils them adequately ?

The unrealizable Ideal would plainly be, that every group should rely solely on the power of its ideology to persuade the government that it was being unfairly treated under the existing law and administration ; that the government with a divine impartiality should habitually judge the claims of every Interest-group on their merits ; and that the various groups should loyally accept its decision as best for them in the long run.

We know that this does not occur to any great extent in the actual world. What methods do Interest-groups use, other than that of simple persuasion ?

An Interest-group may either (i) induce the existing



government to fulfil its wishes, by means other than simple persuasion ; or (ii) overthrow the existing government and substitute another more to its liking ; or (iii) break up the existing form of state. Each of these methods is evidently more disturbing than the preceding one.<sup>1</sup> The various constitutional devices are attempts to divert the political activities of the Interest-groups from the more harmful into the less harmful channels of influence.

Apart from constitutional devices, a government can be influenced by the simple obstruction of an important Interest, making its task difficult ; or by an alliance of important Interests which threatens to make its task impossible. A government is overthrown when it can no longer govern, since the important Interests will no longer obey it. These are the Interests which are vital to the maintenance of regular social co-operation, such as the farmers, the army, the industrial workers, the bureaucracy. These together form the final source of power in any state, the only power before which the government must bow—these, and not the “people” considered as an abstract number of heads. Probably in any state a concerted effort by one or two of these important Interests is enough to overthrow the government. But not to replace it ! A stable government, felt to be legitimate, requires the support of more than one or two important Interests. Where a government is overthrown by one or two Interests and replaced by another whose avowed purpose is to secure the predominance of these one or two Interests over all others, we have a “revolutionary situation”—a government that has come into being through revolution and is pledged to support

<sup>1</sup> Whether it is more *harmful* cannot be judged except by the considerations put forward in Chap. XIII. It may be that the time has come, according to the inscrutable laws of the selection of human types, to replace one governing class by another, by revolutionary methods. But no government can ever admit this, and it is a question which force alone can decide.

the Interests that made the revolution. For a time at least it will make no pretence of treating the defeated Interests fairly. It may—in fact it must—broaden its basis in time, but for the time being it must maintain itself by a policy of repression. This ought to be realized in judging the harsh measures employed by revolutionary governments.

A principal problem of *constitutional* government is: how to prevent “revolutionary situations” from occurring, by preventing the government from ever becoming identified with any special Interests, while sublimating into a relatively harmless form the efforts which the Interests will inevitably make to influence it?

The advantage of hereditary autocratic government is, that it will not be easy for an Interest or combination of a few Interests to replace the government by one that is subservient to their special interests. Interests may put pressure upon a hereditary king, but if the tradition of legitimacy is strong among the people in question, they will not find it easy to replace him by a subservient one. The disadvantages of hereditary autocratic government are (apart from the vital question of selection, which does not concern us here), first, that the means whereby Interests seek to put pressure on the government are not open and regularized; and secondly, that the only means by which they can replace it are liable to cause grave social inconvenience and even the complete overthrow of the whole social order.

Representative government aims at remedying the first of these inconveniences, “responsible” government the second.

It is well recognized that in large assemblies, especially where they are composed of representatives of different Interests, the appeal to reason has little power. It is for this reason that we deride the numerous law-courts of ancient Greece and Rome, composed as these were of

several hundred or even several thousand persons. For this reason, too, England has developed the admirable institution whereby private legislation is referred to a quasi-judicial hearing before a very small body of persons. Yet a private bill is a demand for a change in the Law ; however, we have recognized that it would be intolerable if the political struggle of the Interests were allowed to invade every relatively trivial detail of legislation, as it appears to do in some states of the U.S.A.

Democracy then is a sublimation of the political struggle of the Interests ; it aims at providing a relatively harmless form within which the Interests can try out one another's strength, and exert pressure on the government. In the "responsible" type, the Interests which form part of the majority in Parliament are encouraged not merely to threaten, but actually to overthrow the government, in order that they may be discouraged from overthrowing the social order. Under this system, therefore, it is almost certain that some Interests will exercise an undue degree of influence over the government, and others will suffer unduly—in any given Parliament. But the Interests which suffer generally acquiesce in the system, so long as the representative body appears to be a fair reflection of the strength of the main Interests throughout the country, and above all so long as they feel they have a fair chance of *altering* the complexion of Parliament in the future.

The two basic conventions of the "responsible" Parliamentary system are (1) that the government must resign if defeated in Parliament ; (2) that Parliament must submit to re-election frequently and regularly. Why are these conventions acquiesced in ? Under what circumstances do they break down ? They both rest upon a tacit agreement to be content with the conventional and regulated trial of strength which Parliament provides, upon one vital condition, however, viz. that the Interests

which are for the moment dominant in Parliament do not use their predominance to perpetuate their power. There must be at least some chance—often very slight—that a realignment of parliamentary groupings may bring the government down at any time; and there must be a good chance that at the recurrent general elections a *really* different government may get into power.

Much of the success of the English system is due to the fact that it has been in practice a “bi-dynastic” hereditary monarchy, with two great Parties as two alternative dynasties. It has thus enjoyed the grand advantage of all hereditary monarchies, viz. that it is difficult for any set of Interests to get the government under their thumb for long, with the additional advantage of having an *alternative dynasty*, which in principle will favour precisely those Interests which have fallen short of their due recognition under the other. It is as if, instead of constituting a court of justice with a single judge who was expected to be impartial, we should arrange to have two judges, one every alternate day, the one of which favoured plaintiffs on principle, while the other on principle favoured defendants. The English form of democracy is excellently adapted to secure peace and to avert the revolutionary situation which arises when one set of Interests get possession of the government and make up their mind to exclude their opponents from power for all time.

Here we find our answer to what I might call the *mystery of the electorate*. Ever since Dicey adopted the phrase “political sovereignty” of the electorate, it has been a mystery of contemporary orthodox theory why the electorate—a *legally* constituted, *legally* varied body—should be regarded as the ultimate source of legal authority. I never could make out why we ought all to defer to the views of either all males over twenty-one, or all males plus all females, with or without a property or a residence

qualification, whether voting by localities or by occupations, whether on a preferential system or on an absolute-majority system. Why should any one of these various bodies be the ultimate source of authority rather than any other? The answer is that none of them is; that as soon as we go behind the legal authorities, we can find the ultimate *sociological* source of power only in the important Interests—in the views of those groups who as a matter of fact are indispensable to the continuance of the state as an organized political society. We cannot define in a legal formula for all time who these are; we can only indicate them roughly from time to time. The electorate is merely the legal body which has been legally constituted, with the approval of the important Interests, for the sole purpose of replacing or confirming the government. It has been so constituted because it reflects on the whole the strength, economic and ideological, of the important Interests—because its vote will give a result that the important Interests will accept. It is not necessary that it should reflect the power of the various Interests at all accurately. In no Parliamentary state does the electorate in any real sense *choose* the personnel of the government. The candidates for office on both sides are always given safe seats, and if they should fail to be elected by a mischance, a seat is soon found for them. But provided the vote of the electorate is capable of reflecting major changes in the respective power of the important Interests since the last election, and provided elections are held frequently enough, it will fulfil its purpose—that is, the Interests will refrain from other and more violent methods of changing the government. This is especially the case where, as in England and the United States, there is a “dynastic” element in the situation—two recognized alternative bodies of persons marked out for government. Experience seems to show that changes in the method of constituting the electoral body, let us

say, the enfranchisement of women, do not make very much difference—provided they are not obviously made with a view to excluding some important Interests from power for ever.

On the Continent, where this dynastic element has been absent, Interests have been able to get control of the various small groups, and constitute a semi-permanent alliance to use the governmental machine for their own benefit. Governments are constituted by a cartel or block of groups, which are often clearly economic Interest-groups, united with the sole purpose of keeping their rival Interests from power. In a country which has a representation system based on proportional representation of groups—especially where elections are only held at regular intervals and the parliament cannot be dissolved—the character of the government can only be changed by a realignment of the groups, by the actual defection of some of the groups supporting the government and their alliance with opposition groups.

On the English system, with a large and amorphous electorate, an alliance of Interests, e.g. of Church and brewers, or of chapel and cotton, can hardly ever be sure that if it overthrows one government it will be able to get another that is "under its thumb". If it is not very successful with one of the great parties, it can try and get the other put into power; but each of the great parties has had a long tradition of rule, and the government will not act simply as the creature of a tactical combination of Interests.

All democratic constitutions are based on a distrust of human nature—on a belief that governments will usually rule for their own advantage, and are incapable of being persuaded; and that subjects will not accept decisions that go against them, but will try and reverse them by force. It must be admitted that there is much to be said for this pessimistic view of human nature. To remedy

this original sin of human nature, the electorate and the representative Parliament have been devised to control the government, and provide a relatively harmless outlet for the conflict of the Interests. Provided these controls are operated according to the fundamental rules of the game, set forth above, it should be possible to avoid both really corrupt government, and revolution. This is a very considerable achievement. Its drawbacks are: that a distrusted government which can do little harm can also do little good; and that Interest-groups which have been accustomed to get their way by capturing a majority in Parliament will not be disposed to make reasonable compromises with one another. It has been often said that democracy favours discussion; but the only kind of discussion it favours is one where a majority group, when it fails to convince, can always say: "Enough of discussion; now let us get down to voting."

Constitutions differ according to the degree and kind of the dependence of governments on "voting power". Some governments may be conceived as *altogether* independent, as were the European monarchies, with few exceptions, down to the end of the eighteenth century. Or a government may admit that its authority is derived ultimately from a popular vote; and yet claim a great deal of independence in detail, only consulting the electorate when it chooses;<sup>1</sup> such is the position of the National-socialist and Fascist "dictatorships", which are more appropriately called "authoritarian" governments. (The governments of the non-self-governing colonies are either independent or authoritarian, but these are parts of a composite Empire). Again, it may admit the right of an electorate, or a representative body, or both, by majority votes to control its policy continuously

<sup>1</sup> It may consult them frequently, but according to rules which undoubtedly weight the scales in its favour.

and in detail ; this is strictly democratic government. The representative body may be homogeneous, or it may be composed of two chambers or of one chamber of which different members are appointed on different principles. There may be only one stage of representation, or there may be several stages, subordinate and superordinate. Finally, the lawful authority may be settled upon a single individual, or jointly upon a collegiate body, such as a cabinet or committee of the representatives.<sup>1</sup>

Living growths do not fit exactly into pigeon-holes. There are many mixtures and transitional types. The British Constitution, for example, is notoriously hard to classify. This is explained by the fact that it is *in transition*. It was originally, until 1689,<sup>2</sup> a composite state with the authority divided between an independent King and the Estates of the Realm ; it is at present a unitary democratic state with a single mixed representative body, King-Lords-and-Commons ; it is tending more and more to be a democratic state with a simple one-stage representative body, the House of Commons. Its past leaves traces, and its future casts shadows before it.

It seems essential to an understanding of the matter to eliminate the trivial cross-divisions of the textbooks (such as "written constitution", "administrative law" and the like), and to attempt to set out a classification of constitutions based on a single *fundamentum divisionis*, and one moreover which explains the differences in their mode of operation. The real differences in the functioning of governments come from the degree in which they are independent and the degree in which they are legally controlled. No civilized government nowadays has absolute legal independence ; no government is absolutely without discretion and power of leadership. Between these extremes we find all sorts of intermediate stages.

<sup>1</sup> For explanation of this paragraph, see Table on next page.

<sup>2</sup> Cf. W. I. Jennings : *The Law and the Constitution*, p. 30.

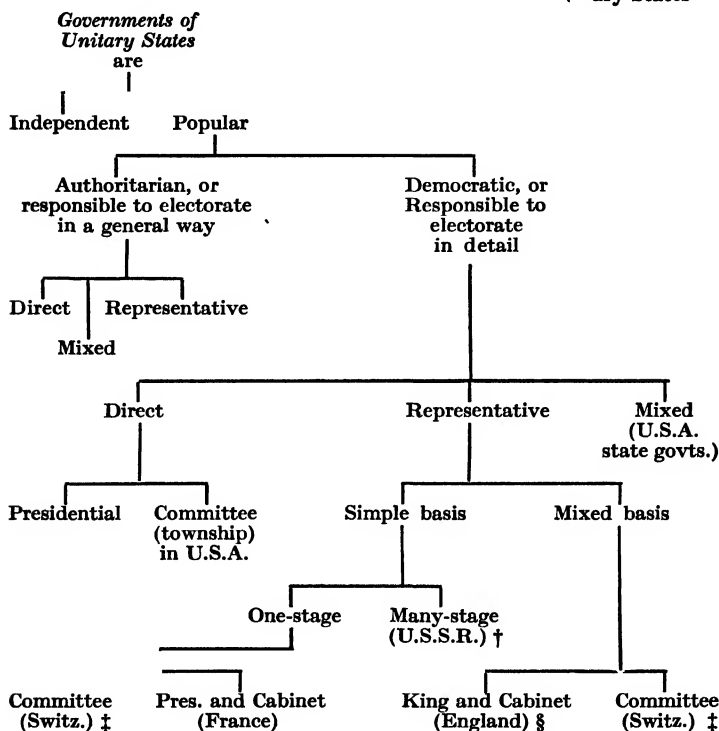


TABLE II

States are *Unitary* or *Composite*,  
acc. as source of authority is con-  
ceived as single or multiple.

*Composite*  
"States" are :

Confederations  
Unions  
Federations  
Suzerain  
and Protected  
Devolved Unit-  
ary States \*



\* The whole question of the Compositeness of States is one which ought to be treated here, but which I have not been able to treat in the present book.

† But in practice it is authoritarian, owing to the many stages of election, which enable the Communist Party to monopolize the higher stages completely. The introduction of one-stage representation has been announced. It is also a composite state, so not properly to be included.

‡ The proper classification of Switzerland depends on the view one takes of the significance of the referendum; are we to say that the Bundesrat is to some extent responsible *directly* to the people? And it too is composite.

§ On this view of the English constitution, the King must be looked on as *in a way* representative of the electorate, since in constitutional crises, e.g. Reform Bill, Parliament Act, he is expected to defer to it. In practice, the English constitution approaches the French.

It is almost certain that *direct* control by the electorate (plebiscites, referenda, etc.) fetters the government much less than control by representatives. It is almost certain that a many-stage control (indirect election, etc.) fetters the government less than a one-stage control does. It is almost certain that the requirement of *collegiate* responsibility for all the acts of the government fetters it more than where the head of the government is individually responsible. Many other generalizations might be made ; our present purpose is merely to exhibit the essence of a constitution, which is the legal expression of man's natural distrust of government and sublimation of the natural quarrelsomeness of the Interest-groups.

We have interpreted democracy as fundamentally a check on the ambition of rulers. Some people have given quite a different explanation of it, on the following lines : " Government is not a task requiring special ability ; anyone of average intelligence can govern ; government is therefore a privilege which ought to be shared equally among all, so far as this is possible." The assumption behind this line of argument seems to be so untrue as not to be worth refuting. But if it were true, then the Athenian system of having as many offices as possible, and assigning them by lot, would be far the best plan.

Another argument commonly used in favour of the democratic method is the following : " Where there is a conflict of interest between different groups within the state, any appeal to reason is vain. For a capitalist government (for example) will estimate the relative importance of men's different contributions according to a capitalist standard, whereas a workers' government will estimate their importance according to a workers' standard. And these are totally different ; therefore there is no place for reason, but it is a question either of force or of voting." To which the answer is, that on relatively

minor issues voting is a poor substitute for discussion, experiment and agreement ; on really vital issues it is no substitute for force. Even to-day, in spite of the general cooling of convictions, the best men have some issues on which they will not yield without a struggle.<sup>1</sup>

<sup>1</sup> Of course a vote may be taken as an indicator of the potential force of rival parties ; Hitler's plebiscite of April 1936 on the Rhineland issue was intended to be such an indicator to the French.

## CHAPTER XVII

### EXCURSUS ON THE PRESENT BRITISH FORM OF GOVERNMENT; IS IT DEMOCRATIC?

The gradual change whereby the cabinet has been gaining in political weight at the expense of the House of Commons is of importance, for it is precisely in the cabinet that the governing class is most strongly entrenched.

LOWELL (1908)

**I**N Chapter I we defined democracy as that method of government in which the most important administrators were chosen, and the most important decisions taken, by a majority vote of large bodies of persons. How far does this hold of our present British form of government?

To get light on this, we must try and answer two interrelated questions: *How is the policy of the administration determined? How are the principal administrators selected?* One would naturally suppose that it would be easy to find an answer to these questions from the innumerable books on Political Science and on the British Constitution. As a matter of fact they tell us almost nothing. Determining a policy is quite a different matter from approving or disapproving a course of action which has been already taken, or which the constituted government propose to take; selecting a government is quite a different matter from choosing between two or three possible leaders of a government.

It is evident on a candid view that the electorate as such (the "people") neither determines policy nor selects the important administrators; it exercises a certain revisory power upon policies already adopted, and an

ultimate choice between two or three alternative "leaders". Are these functions of determining policy and selecting administrators performed by Parliament as a whole; or the House of Commons as a whole; or the majority party<sup>1</sup> in the House of Commons? In each case the answer seems to be in the negative. The members of the parliamentary party (fraction) do *not* hold regular meetings to instruct the government as to the line they are to take on the issues of the day; nor do they as a whole elect the Ministers or even the party's candidate for the Premiership.

Turning to the outside party organizations, can it be said that current policy is *determined* by the Union of Conservative Associations, the National Liberal Federation, the Labour Party Conference? Can it be said that these organizations select the Ministers, when their party is in power? As soon as the questions are put in this form, it is seen that they must both be answered in the negative, in spite of some attempts in this direction by the Labour Party Executive during that party's last tenure of office and resolutions at recent party conferences.<sup>2</sup> The government has to take into consideration opinion in the parliamentary party, in the representative party organization, and in the electorate, in so far as this can be estimated; but its policy is not determined, nor is its personnel selected, by any one of them. No one of these is a corporate body with regularly constituted agents acting for it; each is, in differing degrees, an amorphous mass.

The leader of the party and potential prime minister is

<sup>1</sup> The many different senses of the word "party" are most unfortunate. It may be taken to mean (a) the members of the Houses of Parliament who take the party whip; (b) the Central Office with its permanent staff; (c) the representative federation of local party clubs in the country. I shall occasionally use the continental term "fraction" for the parliamentary party.

<sup>2</sup> In the U.S.A. the Republican and Democratic conventions do elect the President.

in fact chosen in a small conclave of influential members of the party fraction, mainly ex-ministers, on the ground that he is expected to command the most confidence among the members of the Parliamentary party. When he becomes Prime Minister, he selects his colleagues mainly for the same reasons. The members of the fraction cannot impose on him any policy in advance ; he is put forward by his sponsors as a man whose actions they will be likely to approve of in future. When he is once selected, professed loyalty to him is made almost a *sine qua non* of parliamentary election as candidate of "his" political party. When once he has been entrusted with the government, he cannot be recalled either by his party fraction or by those who voted for him at the last election. There has been no case in the last fifty years of a leader who has been once entrusted with the government being subsequently deposed by his party.<sup>1</sup> Thus the manner of his selection gives no countenance to the idea that his policy is determined by a mandate either from the "people" or from his party.

The question of Election Programmes is more complicated, but appears on examination to yield the same result. It is important to distinguish the general party ideology from the specific issues on which an election is fought. Every party leader has of course to accept the general ideology of his party, and this may exercise a certain negative influence on his policy when in power. Apart from the question of the Interests which he would thereby offend, it would certainly be difficult for a Conservative Prime Minister to propose the abolition of the monarchy or of the Church, simply because the abolition of an old battle-cry would produce utter confusion in the ranks of his regular party supporters. In the modern democratic state, a party, in order to win, must have an elaborate

<sup>1</sup> The case of Mr. Lloyd George is a peculiar one ; but he can hardly be said to have been deposed by *his* party.

permanent organization ; without such an organization it is impossible for a leader, however brilliant, to achieve power.

Thus it is not enough for Mr. Baldwin or Mr. Macdonald to keep together a majority of personal supporters in Parliament and in the country—they might quite well do this by appealing now to one group of Interests, now to another, as perhaps French Ministers-President can do to some extent ; in this country it is technically necessary to maintain a permanent alliance with one of the great propaganda machines which go on building up a body of supporters from election to election. These organizations, with their recurring slogans and their colours, have brought it about that a considerable number of electors support one party out of lifelong personal habit or even family tradition—regardless of the issues of the particular election or the persons to be elected—simply because they or their family have always voted for that party, it is *their* party—it makes a claim on their personal loyalty. Undoubtedly they or their fathers once had some reason for supporting this party rather than the other ; but the reason has long been forgotten ; they go on voting through thick and thin for the good old party. It is impossible to estimate how numerous these persons are ; it is safe to say that by themselves they would never win any election ; but as a living force such political habit must be reckoned with.

Now a party which intends to count on this class of supporters must have a permanent name, and must have a certain amount of simple and general party ideology which goes on from election to election. This ideology may have very little to do with the issues on which any given election is actually fought ; its effect on the policy of government is minimal ; like the party name, it merely serves to hold the habitual supporters of the party together. “ Empire ”, “ Socialism ”, “ Peace, Retrenchment

and Reform " are ideologies of this nature. The practical questions of administration are questions of "How much?"—how much Empire trade, how much state control, how much expenditure on what, how much risk for the sake of peace, and all governments decide them with a view to the requirements of the situation and with little regard to party ideology. The party ideology is certainly framed to appeal to some Interests rather than others, but the Interests will be little influenced by general party ideology and much by the actual issues of the election—the policy of the past government, and the proposals which the different leaders make for extending or amending it.

An election is never fought in a democratic state except on specific Issues. These issues are invariably chosen either by the government or, if it is unlucky, by the opposition. Elections may be divided into "free" and "forced". In the former the time of the election is deliberately chosen by the government, as the most favourable that is likely to occur in the immediate future. In this case it may appeal to the country "on its record", or it may make some important fresh legislative proposal for which it claims to require "a fresh mandate" from the electorate. If it appeals on its record, it tries to emphasize those of its acts which will make a wide appeal, not merely to the habitual party voters; these will probably have little to do with the general party ideology; a big fresh legislative proposal, such as reform of the House of Lords or Tariff Reform will be advocated rather on the ground that the present situation requires it than simply that it is in accord with the party traditions. On the other hand, if the election is forced on the government, either as the result of a direct defeat in the House of Commons, or because it is threatened with the revolt of some of its majority, the opposition will have decided on what issues to attack it, and will have judged that the present is a



favourable moment. But the opposition can only bring about a defeat or serious threat to the government by appealing to the Interests which have hitherto supported members of the government majority ; and such appeal is not likely to have much to do with the general party ideology either. Thus the initiative in deciding the issues on which an election is to be fought is of paramount importance to the parties, and it is one of the principal tasks of government to secure this initiative.

The conclusions which seem to emerge are these : (1) the result of a general election is not much affected by the general ideology of the parties, it is greatly affected by the action of the previous government ; (2) the government's policy is not much influenced by the results of the election through which it came to power, it is considerably affected by the expected results of the next election which it will have to undergo ; (3) owing to the strategy of elections, the results of an election fought on one issue are not much of a guide to what will happen in a future election fought on quite a different issue. The government nowadays cannot say to itself : " We have a mandate to pursue a conservative, liberal or socialist policy "—there *is* no conservative, liberal or socialist programme being steadily developed from government to government. A government gets into power by skilfully exploiting the unpopular acts of its predecessor, and renews its power by skilfully exploiting its own popular acts.

It is very instructive to observe how in England the wheel has come full circle—how we have proceeded from independent monarchy through a degree of democracy, and are now fast progressing away from democracy. Parliament thought to control the King's ministers by insisting that they should at all times command a majority in the House of Commons ; but since no government worthy of the name can submit to having its policy constantly thwarted, governments set themselves to tighten

up party discipline and insure that they should always have a majority in the House of Commons. By the nature of things a large body cannot make policy ; it can only check and control. "An assembly can only say Yes or No." In France and America committees and groups of the legislature make policy independently of the government, and have reduced government to a state of impotence and discredit.

In England three facts have emerged as indisputable, as the result of the post-war development : The first is, that with insignificant exceptions only the government legislates ; <sup>1</sup> it has of course to justify its legislation to public opinion and conciliate as far as possible Interests opposed to it—but so does the most authoritarian government. It alone proposes legislation (the exceptions are so insignificant as not to be worth mentioning), and it can count on getting its legislation adopted in substantially the form it desires. The second fact is, that nowadays the government as such as elected <sup>2</sup> by the "people"—the indirect election via the members of Parliament has become almost as much of a farce as the indirect election of the President in America. The third fact is, that the government is no longer bound by party programme, but administers and legislates on much the same lines whether it is conservative, labour or national, with one eye on the necessities of the situation, and the other on the powerful Interest-groups which may give it trouble at the next election.

In the post-war period, government in England has emancipated itself more and more from the control of the ordinary member of Parliament and the ordinary member of the party, only to fall more and more under the influence of the active, vocal and well-organized

<sup>1</sup> Cf. W. I. Jennings : *Parliamentary Reform*, p. 131.

<sup>2</sup> In so far as choice between two or three alternatives constitutes "election".

Interest-groups outside of Parliament. The reason for this development is twofold : In the first place the sphere of government has enlarged immeasurably within our own experience and become exceedingly complex ; moreover, the quasi-legislative power of government, its power to extend and restrict the Law without resort to Act of Parliament, has become immeasurably greater than it was. It is not likely that government will be able to regulate such technical matters as the licensing of bulls or the conditions of the cinema industry efficiently without hearing the views of the organized Interests concerned. The first duty of the administrator is to promote a better co-operation between Interests by judicious extension and restriction of the Law. If the administrator is skilful in finding principles of agreement, his regulations will "work" better than if he tries to enforce regulations which are unsatisfactory owing to insufficient grasp of the situation.

But in the second place, these Interests are the only calculable elements in the electorate ; statistics of their membership are often obtainable ; it is possible to estimate their strength in different parts of the country ; to estimate the influence they may have over certain members of Parliament ; finally, to estimate the damage they could do if they chose to proceed to "ultimative action"—to withhold their co-operation altogether and try to make the regulation in question unworkable. And in this calculation of the probabilities of the next election, the influence of the organized party clubs—of the staunch party-members as such—is only *one* factor among many, one Interest-group like the rest—probably a minor factor.

The democratic elements in our constitution therefore reduce to two. A majority of the electorate has every few years to choose between two or three alternative governments (one of which it knows, while the others are unknown quantities) ; every member of the government

has to be selected from among some 600 persons, each of whom has secured a majority vote in some locality in the British Isles ; and the government has to keep the general approval of the majority of these 600. This amount of democracy does not seem very formidable.

To estimate the effect of these democratic institutions, for good and evil, let us try and imagine what difference it would make if they were eliminated. Imagine Parliament as a purely advisory legislative council, consisting of a certain number of notabilities selected (by government or by corporate bodies)—with care to represent different classes, professions, ages and sexes—from the counties and cities of the kingdom ; imagine the Prime Minister selected by the King from among these, and the Ministers of his choice not having to pass the test of a general election ; finally, imagine that the government is not required to consult the electorate every five years, but only when it thinks fit, in order to test opinion on some particularly vital question. (This is roughly the situation in the authoritarian states of Germany and Italy.) Supposing the change were made quite peacefully, and not as the outcome of bitter civil strife and a revolutionary situation, I do not believe there would be any great change in the policy of government, nor do I believe that the mass of the people would feel that they were any worse “ represented ” than they are now.<sup>1</sup> It is only this sort of

<sup>1</sup> Consider two great occasions on which the House of Commons has recently asserted itself against the government—the matter of Unemployment Assistance, (January, 1935), and the matter of the Hoare-Laval proposals, (January, 1936). Would such action have been possible for a body that was unable to turn out the government ? My tentative answer is : in the former case, Yes, because the government would have been concerned for the efficient working of its unemployment proposal ; in the latter case, No, because the government with its knowledge of the diplomatic situation, well knew that the Hoare-Laval proposals were good and would justify themselves in time, whereas the agitation was the work of an ignorant and irresponsible public.

comparison which can enable us to see the (real) differences between the English form of "democracy" and the undemocratic, authoritarian forms of government. Comparisons between the present working of democratic government in England and authoritarian government in Italy, for example, are wholly misleading.<sup>1</sup>

My belief is, that both the advantages and the disadvantages of the change imagined above would be relatively minor ones. It is conceivable that the Ministers might be slightly more competent ; because they could be drawn from a wider circle and need not be platform orators ; on the other hand they might be less competent, since election tends to exclude nepotism. On minor issues the government would perhaps be less easily deflected from doing what it thinks right through fear of the opposition of powerful Interest-groups ; on major issues it would have just as much reason to fear the obstruction of the powerful Interests, and this opposition—deprived of its electoral safety-valve—would be much more dangerous to the state. The electoral safety-valve makes it easy to get the government replaced without risk—at a certain cost to its efficiency. But it must be remembered that the modern authoritarian state has also its safety-valve—the "sovereign party" or "Movement" (as it is called

But being liable to be turned out by Parliament, they did not dare back their own convictions. In the former case, popular agitation brought real anomalies and hardships to the notice of the government ; in the latter case, it frightened them out of doing what they believed to be their duty. (Of course, this is simply conjecture from reading between the lines of speeches, and may be entirely false.)

<sup>1</sup> There is no evidence that democratic government as such is particularly tolerant of free speech, etc. The most democratic government England ever had, viz. that of the Long Parliament, was particularly intolerant. It required a dictator, Oliver Cromwell, to stick up for tolerance. The opposite view is a deception derived from comparing different situations and different national temperaments.

in Germany) or (as I have called it) "governing class". This is the watchdog of the existing form of state, bound up with its preservation by ties of self-interest as well as by enthusiasm, disciplined and keen ; it should prevent the three evils which may undermine an authoritarian government, viz. corruption, capture by a single Interest, and gradual loss of public confidence through ineptitude and inefficiency.

If we have another term of National Government with a large majority, this will undoubtedly bring the practice of the English constitution even nearer to that of the authoritarian states.

On the whole the dose of democracy that we have at present is a valuable asset ; but let no one imagine that its safety-valves would work if once a government tried to put into effect a really revolutionary policy, likely to deprive large numbers of people of their livelihood. Such a notion is a fantasy of the Socialist League. Further, safety-valves are a useful device, but I have heard that in times of emergency engineers sometimes keep them closed with additional weights, thus diminishing their margin of safety in order to get a little extra steam pressure. So in times of great difficulty it is more important to get adequate leaders and give them enough scope, than to have the most perfect system of constitutional safeguards.

## CHAPTER XVIII

### INTERNATIONAL RELATIONS

Perhaps the great day will come when a people that has excelled in war through perfection of intelligence and military discipline, that is trained to bear the heaviest sacrifices to that end, will freely declare : " Now we break our sword," and abolish its army to the last man. To abandon arms when you are at the height of your strength and pride—that is the way to a real peace, which can only come from character and conviction. It is better to go under than to live in fear and hate.

NIETZSCHE

**I**N no department of political life are the effects of superficial thinking, its superstitions and hypocrisies, more evident than in the field of international relations. The insincere and muddle-headed theories upon which the family of nations was rebuilt in 1919 have received some rude shocks in recent times—the veiled annexation of Manchuria ; the rearmament of Germany and her reoccupation of the Rhineland ; the Italian conquest of Abyssinia.

Two quite incompatible plans of international organization seem to be alternating in the minds of the statesmen, and they often act on one and pay lip-service to the other. Moreover, at no time have the fancies of the general public borne so little relation to the facts with which the statesmen are grappling.<sup>1</sup>

This is to some extent due to circumstances of historical development. Most of the system of international law and international courtesy derives from the time when governments were " independent ", in the sense in which we have used that word, and were in no sense " democratic " or even " popular ". Grotius, the recog-

<sup>1</sup> The correspondence columns in the English popular press daily provide astounding evidence of this.

sometimes obliged by political changes at home to be faithless; <sup>1</sup> the less honourable found abundant excuse. Salisbury, a very honourable man, puts the position well in a conversation with Herbert Bismarck :

We live no longer, alas ! in Pitt's time ; the aristocracy governed then, and we were able to form an active policy, which made England after the Congress of Vienna the richest and most respected Power in Europe. Now democracy is on top, and with it the personal and party system, which reduces every British government to absolute dependence on the *aura popularis*. This generation can only be taught by events.<sup>2</sup>

(ii) The effects of Nationalism are no less striking. As soon as the " sovereign people " becomes equated with the " nation "—a cultural and linguistic unit—it soon appears that there are several nations within one state, and again several states within one nation. Irredentism appears on the scene, and most questions of foreign politics become mixed up with questions of domestic politics. Governments begin to stir up revolt among the subjects of other states with whom they are supposed to be at peace. But even without such stirring up, natural sympathy causes revolt.

(iii) The idea which in this connection I have called Socialism might perhaps better be called the idea of the " welfare-state "—the idea that the government is there to provide material benefits for large classes of its citizens. The state's " maintaining the standard of living " by tariff policies, etc., has been a fruitful source of disagreement between states.

(iv) The idea of Imperialism, closely connected with this, led to the race for markets and spheres of influence and divided the world into exploiting and exploited states.

<sup>1</sup> A few instances among many—Lloyd George and Greece, Ramsay MacDonald and the Geneva protocol, Sir Samuel Hoare and M. Laval.

<sup>2</sup> Salisbury, reported by Herbert Bismarck, *Grosse Politik*, IV, p. 404 ; in J. A. Spender : *Fifty Years of Europe*, p. 118.



Socialism and Imperialism are closely connected, and taken together might be styled "Economic Nationalism".<sup>1</sup>

The association in people's minds of the "patrimonial" conception of the old diplomacy with Imperialism and Socialism tends to produce the belief that in economic matters one state's gain must be another state's loss. As a matter of fact the welfare of the masses in all countries is more interdependent than it has ever been, owing to the rapid transportation of persons, commodities, new ideas, diseases, civil commotions—things agreeable and disagreeable. But because all these matters are now and must be more and more regulated and organized by the National State, the national welfare-policy of one state interferes far more than it did with the national welfare-policy of its neighbours. For instance, most states now have a definite agricultural and foodstuffs policy, and many states have a demographic and racial policy. There must be many more sources of conflict between socialistically-minded states.

Further, the numerous contacts of the citizens of different states have called into being a vast number of organizations for dealing with particular problems, which ignore state boundaries. Such are the international oil trusts

<sup>1</sup> Cf. O. Spengler : *The Hour of Decision*, tr. Atkinson, p. 168 : "Coloured wages are a quantity of a different order and different origin from those of the white. They are dictated, not demanded. This is not called 'reaction' or 'injustice to the proletariat' but 'colonial policy'; and the English worker at least has been quite agreeable to it, having learned to think imperially. In demanding the 'full' value of the proceeds of industry as the workers' wages, Marx tried to suppress one fact, which it would have been more honest to note and take account of: the proceeds of the Northern [i.e. European] industries include the cost of tropical raw materials—cotton, rubber, metals—and this in turn includes the *low* wages of coloured labour. The overpayment of white labour therefore depends upon the underpayment of coloured labour." Spengler in this book shows the dependence of the high standards of the industrial countries on the continuance of low standards in the colonial countries, with many graphic illustrations. Without being in agreement with all of it, I find it a stimulating book, which all democrats should read.

and steel cartels, the international federations of trade unions, the international scientific, commercial and professional organizations. Governments that are nationalistically and socialistically minded must distrust these non-government unions, as weakening their claim to be the sole mouthpiece of "their people", and weakening their power to plan its welfare. Yet they have evidently come to stay.

The attempt to reconcile the old "patrimonial" conception with democracy has also caused difficulties. Inter-state agreement is really incompatible with the notion of democracy : Mussolini for instance must trust the honour of M. Laval as an individual person to implement his agreements ; you cannot make agreements with "the French people". None the less, since agreements still have to be made between states, and democratic governments change frequently, we find all manner of efforts to influence the public opinion of foreign countries, especially through subsidies to the Press. The French subsidized nearly the whole of the Russian press before the war. Negotiators also have constantly to try and work upon the "public opinion" in their own countries, as for instance Lloyd George did in his anonymous *Westminster Gazette* articles during the Versailles conference. Inter-state agreement is still the only recognized form of international law-making ; yet there is a growing tendency to distrust the apparatus of Foreign Offices and ambassadors which was invented to carry it on, as not sufficiently in touch with "the people's will". There is a growing tendency to replace this machinery by *Conferences*, large and public or semi-public ; but whether this is a useful device for getting inter-state agreements concluded is doubtful.

The Conference method is inspired by the perfectly correct notion that most problems nowadays are problems not of two but of several nations ; and by the much more questionable notion that it is a good thing to bring "pressure of public opinion" to bear on the statesmen during

their negotiations. Occasionally this may have had some good effect, e.g. perhaps in preventing the annexation of Corfu by Italy in 1928 ; but more often it has the effect of making the spokesmen of one or two nations particularly intransigent and stubborn ; they dare not make unpopular concessions which their personal better judgement would lead them to make.

Moreover it immensely aggravates the difficulties due to the formal Equality of States. This is a legacy of the old "patrimonial" system. In the pre-French revolution "family of Christian nations" it really did more or less correspond to the facts. But since the French Revolution, the differences, both in degree of independence and in degree of civilization, between the states that partake in international conferences have become overwhelming. These differences are infinitely more obstructive in international conferences, in which all the states claim to be treated equally, than in bilateral negotiations.

States differ vastly in respect of their independence, owing to onerous treaties, such as those concluded with Germany and China, or simply through the fact that they are under the complete economic control of another Power, as is the case with Persia, Cuba or Albania. They also differ vastly in their degree of civilization. The report of an Inter-Allied Commission of Inquiry states : "The eastern boundary of Memelland . . . marks a real division, without any transition, between two civilizations. At least a century separates them".<sup>1</sup> Size and wealth are not the only things that matter ; in respect of all the immanent purposes for which government exists, Switzerland is better governed than Roumania, and this fact ought to be taken account of in international regulations, if they are to be durable.

Yet in spite of these vast differences, there are no

<sup>1</sup> Report to Ambassadors' Conference of 16, ii. 1928, in W. H. Dawson : *Germany under the Treaty*, p. 259.

recognized differences of status among Powers, except in respect of permanent and semi-permanent membership of the League of Nations Council. Law to be respected must treat equals as equals *and unequals as unequals*.

Besides conflicting with the fundamentals of the old diplomacy, the new principles, which are now accepted everywhere as axiomatic, conflict among themselves.

The Principle of Democracy requires the settlement of every dispute by a majority vote. It is seldom possible to find out what the majority of electors in the different countries parties to the dispute want; usually one can only ascertain the views of a majority of *governments*. But where this happens to coincide with the views of the majority of the "peoples", the consistent democrat ought to wish that this should prevail.

But the Principle of Nationality<sup>1</sup> is often at variance with the Principle of Democracy. Nationality is thought to be a real unit, and its maintenance an end in itself; a nationality, it is thought, should not be consistently voted down by members of another nationality. Whence in the "Minority Treaties" *a deliberate departure was made from democracy*, in order to safeguard nationality. Wilson's notion of "self-determination" aimed at conciliating the two principles of democracy and nationality; since in very mixed states, such as the old Austria-Hungary, majority-rule would be intolerable, he aimed at forming every fairly homogeneous national group into a democratic state, in which majority rule could have free play. However, many national groups are so mixed that unrestrained majority rule means great hardships for national minorities; it

<sup>1</sup> Throughout I shall always use "Nationality" in the sense of what Macartney calls "personal Nationality"—the feeling of racial, linguistic and cultural unity, which need not have anything to do with statehood. This seems to me to be the only proper sense of the word. It is a pity "Nation" was ever used as equivalent to "State". Cf. Macartney: *National States and National Minorities*, Chap. III, the best book I know on this subject.

seems that most states can only be made "safe for democracy" after a long period of oppression.

The Principle of Socialism—the notion that the state should aim above all at providing the maximum material wealth for its citizens—may be expected to lead to ever-wider forms of wealth-providing organization. From the Socialist point of view it is nearly certain that everyone—or at any rate the workers—would be richer if the division of labour, the apportionment of raw material, the length of working hours and the conditions of working, were regulated supernationally over much larger areas than that of the national state, by special bodies similar to the Postal Union. An organization of supernational syndicates for governing each industry should not be impossible of achievement, and should certainly be able to increase wealth, by promoting useful division of labour, eliminating wasteful competition, etc. But here the Principle of Socialism comes up against the Principle of Nationality, for this would mean the disintegration of the National State. And it also comes up against the Principle of Democracy, for the *state* representative system is the only representative system there is; majority rule requires an electorate established by Law, and the State is at present almost the only source of Law. In fact, all such supernational planning bureaux must be *expert*, they cannot be democratic. And their plans can be a useful adjunct to the national state, but they cannot dispense with it as the fountain of Law and guardian of its execution. The World War popularized a very useful technique, which is now adopted by the International Labour Office, the International Radiotelegraphic Union and other bodies, of having plans prepared by bodies of experts, which are then ratified and put into force by the various national governments. But there is nothing "democratic" about this method; "the people" cannot express any "will" on the Eight Hours Day Convention, for example; and the

failure of one or two nations to adopt a plan devised by the expert international bureau often renders it futile.

It is often thought that—in spite of the imperfections of such a system of indirect representation—the Principle of Democracy might be sufficiently upheld if all international issues were regulated by a majority of *governments*. This view is not much held by anyone who has studied the subject, but still it seems to be held by a very large number of people, and so is perhaps worth considering. If all international issues, it is thought, were settled by majority vote of the Assembly of the League of Nations, all would be well ; if only all nations were truly “ democratic ” at heart, they would bow to this manifestation of the “ public opinion ” of the world. In actual fact they do not, and majority decisions are only taken on procedure, the League Budget, and “ recommendations ” (*voeux*) that are without much practical effect. But *why should* a majority comprising, say, Salvador, Latvia, and Persia be competent to regulate a dispute between the United States and Italy with regard to immigration questions ? There is nothing that could possibly be called “ public opinion ” in those states with regard to the matter at issue. Such a majority vote would in general be an appeal to the ignorant and irresponsible. Often the opinion of neutral statesmen is exceedingly valuable and helpful in the settlement of disputes, but it is as the opinion of experienced and sensible men, not as the opinion of representatives of anyone. Thus the Permanent Court decides by a bare majority, but its opinions have such weight as is now accorded them because they are the opinions of distinguished individual lawyers. Again, the Permanent Mandates Commission is a body consisting of distinguished colonial administrators, not of representatives, and any influence that it has is due to this fact.

We have spoken already in Chapter XI of judicial settlement and arbitration ; the principles of these are funda-

mentally the same whether applied as between states or between disputing groups within the state. In every case the arbitrator prevails by his *personal* qualities of skill, impartiality and sympathy, not because he represents anyone. In the same way a committee of the League of Nations Assembly may sometimes have weight as arbitrators in an international dispute; but they have weight as individuals, not as representing their states. (International society has only got as far as trying to settle disputes when they arise; unfortunately, the viewpoint of *administrative policy* hardly enters into international affairs nowadays.)

Now that we have cleared the ground of some prevalent superstitions, let us try to envisage what are at present the most hopeful methods for the organization of peace and international order. Two possible alternatives, mutually exclusive, seem to suggest themselves. These are the functional, or super-state method; and the confederal, or inter-state method.

(i) The functional, or super-state method, is that which already appears in germ in the international organizations for Labour, Air and Railway transportation, Posts and Telegraphs, Narcotics and Infectious Diseases, Intellectual Co-operation, Wheat Supply, etc., etc. The principle of this type of organization is: *break up the national state*, or rather, let it more and more simply register and enforce decisions made by the international organizations. (There are some signs of a parallel policy in England with regard to the Local Authorities, which are being more and more used simply to register and apply decisions of the central Ministries.) This method, which attributes great powers of planning to international committees, must either give up democracy and prepare to be ruled by experts; or it must find some suitable *ad hoc* method of representation for each of the international planning bodies. And some

sort of representation will be necessary, if the schemes are to be applied without friction to the various countries.

This method, for its completion, needs in the first place a much larger number of international planning organizations, e.g. Bureaux for Monetary, Demographic and Raw Material control; secondly, a supernational Court or courts to give rulings on the application of the plans and regulations—a court to deal with *individuals*, like the abortive Hague International Prize Court; thirdly, a supernational Police force to make its decisions effective against individuals, in case these were not enforced by the state police (analogous to the Bundesexekution, provided by the German Federal Constitution of 1871). It would mean, in fact, going a long way beyond the present tentative experiments, but not, I think, inconceivably far beyond them; it is not, I think, purely Utopian. It might be expected to result from a universal triumph of Marxian Communism.

Put in terms of a national analogy, it would be as if the work of the English Ministries of Health, Transport, etc., were done by *ad hoc* bodies of experts, with representative advisory councils of the interests affected; their decisions normally interpreted and enforced by courts and police forces maintained by Local Authorities; but with a King's Court, with a police force under its control, to review the decisions of the subordinate courts, and keep the Local Authorities up to the mark. (At times in the Middle Ages the condition of Law and law-enforcement was not so very different from this.)

This method of organization is to my mind not unthinkable. It could not be world-wide, since national standards of judicial interpretation and law-enforcement differ too greatly. But supposing supernationally-minded governments everywhere came into power, it could conceivably be worked over the greater part of Europe and America. The question is, whether it would be desirable. It would not of course be very democratic, and the repre-



sentative assemblies of the states, shorn of all real influence, would very likely die of inanition.<sup>1</sup>

(ii) The confederal, or inter-state method, aims at keeping and strengthening the present omni-competent national states, while gradually forming them into groups. This method recognizes that areas of law and order grow up gradually, and cannot be suddenly manufactured. The existence of law and order depends on a long tradition of leadership and ethos. However many aeroplanes and hired mercenaries they might command, it is most unlikely that supernational governing boards could get themselves regularly obeyed without making use of the mechanism and prestige of the national state. Consequently the inter-state method aims at bringing into being a few *regional* Leagues of powerful and responsible governments, pledged to accept arbitration on a wide and gradually extending variety of subjects; pledged to confer with a view to adopting a common policy against outsiders; and pledged to defend one another against outsiders and against fellow-members who have refused arbitration. This method would aim to leave to the national states-members as much independence and initiative as possible, but to prevent them using this in a way injurious to other state-members. To this end it would aim, not merely to settle conflicts between members as they arise, but to remove causes of conflict in advance. It would need to set up various tribunals—a purely judicial tribunal to deal with breaches

<sup>1</sup> The supernationalist, who proclaims that he simply wants to organize, for example, Europe *rationaly*, taking no account of nationality, should, if he is logical, use all possible means of pressure to get some of the smaller states abolished. For no one in their senses would think of organizing a region on the basis of twenty-three such heterogeneous states. In demanding a League of Nations in which equal states decide all issues by majority, he shows that he is at heart a nationalist, who wants to preserve the national state as such. Who wants to be a "free citizen" of a democratic super-state, whose policy he has 10,000,000 of 1/4 share in determining?

of acknowledged principles of law, a number of specialist arbitral tribunals on monetary policy, colonial affairs, etc., and a secret "political" court of honour; to provide for regular periodic conferences to consider the revision of treaties between members; and to set up a strong Secretariat under a Director of personality and influence, who should be continuously trying to find lines of common policy and propose them to the constituent governments.

Such regional Leagues would become each a strong "club of capable governments", membership of which would be a prize to be desired and not to be lightly given up. In Europe such a League would consist of the Great Powers, who would endeavour to work out a common policy on all questions likely to lead to dispute. A germ of it was present in the Holy Alliance and in the Concert of Europe, and it is to these precedents that we should recur, now that the false egalitarian notions on which the League of Nations was founded have patently broken down. A real Government of Europe nearly saw the light in the Four Power Pact; but France defeated it, for the sake of being able to egg on the small, semi-civilized Powers of Eastern Europe against Germany—history will probably show that she was mistaken, for two can play at that game. One of the main functions of such Leagues would be to agree on a common policy towards the weak and disorderly Powers outside it; these Powers would almost certainly suffer injustices at the hands of the League, but such injustices would be a most powerful stimulus to them to set their own houses in order. A League that was a real source of advantage to its members would also become a source of ethos in them. A League such as the present, that includes governments too unstable and too inefficient to keep their engagements, secures no one, and also obliges no one.

The issue really is—as Zimmern puts it—between a "League" of Nations and a "Society" of Nations (falsely conceived on the analogy of a society of individuals).

States cannot form a Society, but they can form a League or Confederation, as e.g. Trade Unions do. English instinct was right in rejecting the term "Society of Nations".

National Interests may be, and are, perverted or exaggerated by a jingo press, but in general, interests are real, and *really do conflict* in many respects, just as the interests of big groups within the state really do conflict. Nor, in saying this, do we intend to admit any super-individual entities; a "national interest" is merely so much shorthand for "the interest of numerous and vital classes of citizens". Thus it is mainly in the interest of the men of Kent that no strong military power should possess the Flanders coast; mainly in the interest of the English townspeople that we should be able to insure the importation of maritime supplies. But the interest of all nations in the maintenance of peaceful inter-state co-operation is very strong, and is sufficient to enable many conflicts of national interest to be compromised and peacefully regulated. In so far as settled principles and courts for interpreting them have emerged from this process, we have International Law, which though defective in its scope and uncertain in its interpretation is nevertheless truly law.

The chief objection that is made to international law, viz. that the sanctions for its enforcement are inadequate, seems to me to be the least important of its defects. For even within the national state sanctions are only of use provided the vast majority of the people obey the law without its having to be enforced against them. If sanctions have to be put into force against *large organized groups* of citizens determined on resistance, this is a clear sign that the existing law needs amendment and that the society is in real danger of breaking up. The period of Prohibition in the United States, the period of post-war coercion in Ireland, the post-war period of strikes in Italy, presented the spectacle of large organized bodies of citizens banded together to break the law. If a *whole nation* led by its

responsible government makes up its mind to break international law, it is, generally speaking, a sign that there is something radically wrong with this law. Sanctions on the necessary scale will only restore order by means that are utterly subversive of this order. Within the national state there is a government, which if it is at all competent for its job, will prevent this state of things—e.g. large-scale bootlegging or general strikes—from occurring; it will not simply repress them when they occur. International government is liable to be leaderless; disputes have to be dealt with as they occur; there is no one with a *continuous policy* tending to mitigate them, and conserve the forces of a whole group of nations. Such leadership as there has been has always been the informal leadership of a few Great Powers. Between 1815 and 1914, Europe had government of a sort—a government which, when united, possessed overwhelming force. We need an improved Concert of Europe.

Such clubs of a few capable governments, each club controlling one of the big regions of the earth—Europe and Africa, the Far East, North America and South America—would be an immense benefit to mankind, and would probably outlast our time. In national affairs it is quite possible to have for a long time a Coalition Government, consisting of men each of whom represents a great party, and who are none the less willing to work together in the same Cabinet. In international affairs the best we can hope for at present are such regional coalition governments, each consisting of a few Great Powers, capable of averting war by arranging the necessary changes among themselves, and making their will effective with little actual use of force, just because their united power would be overwhelming. Can anyone seriously imagine that a stable order of things is possible, in Europe for example, on the basis of some twenty-three states of all sorts and sizes, each claiming absolute equality and indepen-

dence ? What is urgently needed is, not necessarily the abolition, but the "*Gleichschaltung*"<sup>1</sup> of the small states, the reduction of them to a position something like that of the British Dominions, in which their foreign policy is determined by a government of the Great Powers, who would also intervene to prevent such measures of domestic policy as vexatious tariffs or immigration laws which are likely to cause trouble to their neighbours. Before the conclusion of the Franco-Soviet pact, such an Anglo-Franco-Germano-Italian coalition government was possible in Europe. At the moment of writing all seems dark again. For France has brought Russia back into Europe ; Germany will counter by alliance with Japan ; and the time for world-government is not yet. The Anglo-French government of Europe which is what we have actually had since the war has missed a great opportunity, because it based itself on the silly principle of the equality of all nations, and because Britain failed to keep up her strength.

A coalition government of Europe is still possible, and would, as said before, probably outlast our time. But let no one imagine that even this would be eternal. Who can fail to see the striking analogy between the problems of uniting Germany and Italy, which vexed the statesmen of the nineteenth century, and the problem of uniting Europe, which is vexing them in the twentieth ? The union of Germany might have quite well been achieved on the basis of the predominance of Bavaria or Saxony, instead of that of Prussia or Austria. What was certain was, that it could not be achieved on a basis of equality and independence of many states of all sorts and sizes. Gradually the other possibilities were eliminated, and during the earlier nineteenth century peace and order were maintained by the dual presidency of Austria and Prussia. In

<sup>1</sup> "*Gleichschaltung*", a word invented by the National-Socialists to describe their policy of dealing with the constituent German states. It means, literally, "a switching of trains on to parallel tracks", so that there is no risk of their colliding.

the end the struggle for the pre-eminence of one of these was bound to come ; but when it came, it was short, both sides showed good temper, and the loser was reconciled to the result. The same is true of the unification of Italy, through the gradual predominance of Piedmont over Austria and Naples. In a Europe appeased by a firm coalition of the Four Great Powers, it would gradually become apparent which of them, by combined weight of numbers, wealth, health, inventiveness, self-discipline and spiritual unity, was destined to establish the ultimate leadership and sit in the seat of Rome. At present the struggle for European predominance is like a competition in which one of the competitors in the final hires a man who was eliminated in the first round to trip one of the other finalists up. I hope that Britain will at least be in the final; but still more I hope that she will make an effort now to ensure that the struggle will not be too destructive and that the loser will be able to accept the result with a good grace. Europe is shrinking. Better to be as the Greeks or the Germans in the Roman Empire than to fritter away one's strength trying to maintain an outworn system.<sup>1</sup>

<sup>1</sup> A sensible reorganization of Europe and one that would be immediately practicable would be the following : Let the Great European Powers make a firm agreement to divide Europe into four spheres of influence—south-eastern Europe to be divided between German and Italian influence, north-eastern Europe between German and Russian influence, Britain to control Scandinavia and Holland, France to control Spain and Belgium. Each Power to exercise general control of foreign relations within its own sphere, but not to make any territorial change except by agreement with the other Great Powers. Any allegation that it is infringing rights of another Great Power or making its task more difficult to be decided by majority vote of the Four ; the Soviet Union to attend and vote only when eastern European questions are being discussed. Switzerland to be neutralized and made the seat of all international organizations. Where it is peculiarly difficult to decide to which sphere a Power ought to belong, e.g. Poland, a drastic form of guaranteed neutrality might be considered. Something of this kind will probably emerge if democracy is superseded in England and France.

## CHAPTER XIX

### CONCLUSION

A man's character is his Fate.

HERACLITUS

**E**VERY man living is limited by the capacities which he inherits; they are his fate.

Modern biological science expresses this fact in terms of the theory of Genes passed on from generation to generation, each one the carrier of a complex of characteristics.

Collision with his fellows may kill or maim him, may knock him this way and that, may bring to the surface slumbering powers that had long been dormant; yet the relative strengths of his instincts and his permanent trends of will are due to his heredity.

The differing heredity of men, reacting to the environment, shows itself in differing degrees and kinds of strength and of physical and mental skill, and is the ultimate determinant of the forms which the economic struggle takes.

Plato saw that the economic system was the *appearance*, through which the ultimate natural differences revealed themselves. If it were possible by philosophical theorizing to know what these are, his rule by philosopher-kings would be the best form of government for all. Even if we knew the salient facts of every man's ancestry for, let us say, twenty generations, we should have a fair degree of insight into the latent as well as the patent characteristics of men, and might be able to plan the economic system to better

effect. In that way we might *empirically* come to know what are the various natural types of men, and what is the satisfactory life for each. But planned economy, without an insight into hereditary types, and without planned breeding, cannot go very far ; it soon comes up against the (to us) incalculable element of human tastes and capacities.

We have neither a theoretical nor even an empirical knowledge of the genes and their behaviour ; we can only guess at them through observation of the spontaneous "economic" activities of men. But we can see the social effects of the hereditary constitutions of men in the groupings they form, which are based on their permanent trends of interest. Everywhere spontaneously men form groups with varying degrees of solidarity, expansiveness and power over their members. The fact that a group proves to be durable and capable of exercising a great influence over its members is in general an indication that there is an important similarity of natural type in the make-up of its members, and that it can prove a real outlet for vital energies.

Groups of any considerable size which have to struggle for existence against other groups with divergent interests necessarily develop on the one hand Leadership and Law, on the other hand Ideology and Ethos. They need on the one hand a strong leader to reconcile differences that would disrupt the group and possessing force to make himself obeyed. They need on the other hand an accepted standard of conduct of members towards one another, a conscious pride in this ethos and a will to maintain it for its own sake. In a group which has been subjected to law, this ethos necessarily includes standards of what is just to other groups ; the sense of justice is based on the solutions which the Law has previously found, but goes beyond and even corrects what is merely legal.

Political leadership depends upon an intuitive understanding of the hereditary types and capacities of men ;



a will to identify oneself with some group and hold it together—by means of Law, Force and Ideology ; and a will to build up wider groups, if Nature permits. It is a hereditary capacity, not universal, and where it appears in a high degree, it is well for men if they give it scope. For talented leadership alone is capable of giving scope for the self-realization of those whom it leads.

The “Cunning of Nature”—everywhere careful of the type and regardless of the individual—manifests itself in that the economic struggle for existence gives rise to the two factors which actually limit and restrain that struggle—Leadership and Group-Ethos. Without the struggle the natural leader could not emerge, nor divine the capacities of the individuals ; without the struggle groups would not develop virtues which mark their members out from other groups and are a source of pride and of a sense of obligation.

For men to live together happily and usefully in society, it is necessary for them to have recognized standards of conduct. These enable one member of a group to rely upon another, and help the individual to subordinate his momentary selfish impulses to the welfare of the group which he wills on the whole. But in a very large and complex group, such as the state, it is not necessary for everyone to have exactly the same standards of conduct ; and in fact they do not. Different classes of society and different religious groups have *ethé* that differ considerably. The appearance of the opposite comes from an undue restriction of the term “morality” to those types of action which *everyone* in a given society thinks right. There is of course such a common denominator in England and even in Europe. It is necessary to have a sufficient common denominator of *ethos* in the state ; but it is also necessary to encourage divergences, since it is the smaller groups that are the great sources of *ethos*. We assert, in opposition to Christians and Kantians, that nobody can be happy or useful if he tries to live up to an *ethos* which is funda-

mentally unsuited to his natural type—e.g. if the Melanesian tries to live according to west European standards, or the petty bourgeois according to the standards of the nobility ; and also that a man cannot be a good citizen if he only feels himself obliged to do what *everyone* else feels to be obligatory for *everyone*.<sup>1</sup> Law necessarily regulates many matters about which there is great divergence of ethos, e.g. divorce. The born leader is the man who through his influence upon law and ethos gives the greatest possible scope to the members of his society to live according to their own nature.

Instead of mechanically putting into effect a pre-existent "General Will", he has to be constantly finding and building up, out of the parallel, convergent and divergent interests that confront him, a sufficient degree of mutual respect and sense of justice. His aim must be to get certain minimum standards of just conduct recognized in the relations between enterprisers and workmen, debtors and creditors, townspeople and country-people, clergy and laity, intellectuals and manuals, men and women, public officials and private citizens, military and civilians, without diminishing their pride in their own peculiar type or trying to press them all into the same mould. He cannot manufacture ethos, he can to some extent elicit it and mould it by propaganda and social institutions.

The welfare—even the existence—of the state is dependent on immense numbers of people acting ethically, i.e. doing what they think right because they think it right, regardless of sanctions, and at cost to themselves. This is particularly the case with the higher officials of a state. *Quis custodiet ipsos custodes* ? Now ethical action is com-

<sup>1</sup> This is why our government did not act as "good Europeans" in the autumn of 1935, when it constantly expressed its willingness to do as much towards helping Abyssinia as all the other League members would do, "no less and no more". But—in spite of the ridiculous 1919 Covenant—the duties of a Great Power are in no way the same as the duties of a Small Power.

patible with deference to the judgement of a superior whom you have learned to respect ; it is compatible with deference to a Law, conceived as embodying the collective wisdom of generations ; but it is not compatible with deference to the votes of anonymous majorities. If Parliament tried to dictate to them in detail, as the French Parliament does, I think we should find a marked falling off in the ethos of our Ministers and of our higher Civil Servants. Majority dictation produces a general slackness and disaffection at those points where keenness and public spirit are most necessary. Man can feel an obligation to do what *he* thinks best *for* others ; he cannot feel an obligation to do what *they* think best—unless he is bound to them by special ties of confidence and respect.

This work has advocated a political theory conceived more in terms of men and their capacities, and less in terms of “ representation-mechanics ” :

Only Man achieves the impossible—  
He who distinguishes, chooses and judges . . .  
He alone can reward the good,  
Can punish the bad,  
Healing and saving them ;  
Usefully gathering up  
All that has gone astray.<sup>1</sup>

This work will almost certainly fall between two stools : it is admittedly written with one eye on current philosophical theory, and the other on current political practice. It is my belief that there is a crisis in political philosophy, and a crisis in political practice, and that the two are not unconnected.

The crisis in political philosophy, as I see it, is a triple breakdown : the breakdown of all attempts to explain Government and Law as a simple resultant of individuals' egoistic striving for their own maximum pleasure, without admitting a sense of ethical obligation (Benthamite theories) ; the breakdown of all attempts to show that

<sup>1</sup> Goethe : *Das Göttliche*.

there is a universal, self-evident system of duties—the same for all—from which natural rights and limitations of government could be deduced once and for all (Kantian and Christian theories); and the breakdown of all forms of General-Will theory—attempts to show that I feel obliged to obey the Law because I have “really” willed it, and that legitimate government is one so constituted as to “represent” my “real” will (Rousseauian and Hegelian theories).

The first type of theory was shown up by Henry Sidgwick;<sup>1</sup> the second by Westermarck,<sup>2</sup> Frazer and all the modern anthropologists; the third by E. F. Carr<sup>3</sup> and others.

The fact is, that given the hereditary constitutions of men, there are always some possibilities of orderly co-operation for certain ends, and also possibilities of building up common ethos. But this orderly co-operation, and this common ethos are *problematic*; they have to be brought into being by the skill of politically gifted leaders and aristocratic groups. The leader is nothing without loyal followers, nor followers without a leader.

The crisis in political practice is obvious, if only from the spate of books that has appeared during the past year, entitled *The Challenge to Democracy*,<sup>4</sup> and the like. I do not believe it has very much to do with the economic slump, except that this has made it clear that governments in the democratic states are not fulfilling the primary function for which they exist. Far from finding the most suitable possible employment for all the different types of their citizens, they are failing to find any employment at all for large masses of them. Out of excessive tenderness towards certain Interest-groups, they are letting both the

<sup>1</sup> *Methods of Ethics*.

<sup>2</sup> *Ethical Relativity*; and *Origin and Development of the Moral Ideas*.

<sup>3</sup> *Morals and Politics*, Chaps. VI, XIV.

<sup>4</sup> C. Delisle Burns: *The Challenge to Democracy*.

human and the material resources of their states run to waste. The representative bodies have everywhere lost in prestige and importance. More and more the governments talk over their heads direct to the electorate; they are of no help to the governments for improving their legislation, as a true representative body should be; on the contrary, when there is anything serious to be done, as in England in 1933 or France in 1935, they have to be temporarily eliminated—sent on holiday, their legislative powers temporarily transferred to the government! Most people have come to regard them as a façade, behind which the real struggle of the important Interest-groups to influence the government goes on. At the same time the representative apparatus is an excuse for government inaction, and sometimes a reason for its indecision and inconsequence. Nor can anyone seriously think that “the people” have gained the power which their representatives have lost; the unwieldy herds of voters in the modern state have become the sport of every kind of organized propaganda agency, so that their vote can usually be “fixed”.<sup>1</sup>

Also, since the old governing class, with its powerful if limited ethos, is dying out, and no effort is made to form a new one, the struggles between the economic Interest-groups are becoming more and more unscrupulous and disruptive. The Marxian ideology, which advocates the

<sup>1</sup> Typical answers I received on canvassing a working-class district on the occasion of the “Peace” Ballot:

“What *is* the League of Nations? I never heard of that.”

“I don’t understand at all what any of the questions are about; will you please tell me what to put?”

“I take the *Daily Express*, so of course I threw it straight in the fire.”

“I’d rather not put anything; but will anything happen to me if I don’t?”

But I do not wish to suggest that this irresponsibility is peculiar to the working-class; one meets it equally among the well-to-do and “educated”.

complete destruction of all but one class in the state (although its class of "workers" is a decidedly composite one), is allowed to be openly preached, and is in fact the only ideology which—in its various shades and degrees of "redness"—makes much appeal to youth. The government, obsessed by the Liberal doctrine of ethical neutrality, does far too little to bridle the ruthlessness of bad employers, the dishonesty of financiers, the unscrupulousness of the Press or the demoralising influence of the cinema. A government worthy of the name must not merely prevent breaches of the peace whenever they become imminent; it must promote an ethical order on the basis of which people can co-operate harmoniously. If it is to do this, it must have ethical convictions and the courage of its convictions. A man whose convictions tell him that some social practice is an abuse will not be put off by the argument: "But there is no demand for its reformation". The plain man knows that, and feels that the democratic leaders are lacking in convictions or in the courage of their convictions, and that they cower behind the Parliamentary apparatus or the League of Nations apparatus to hide the fact. Their speeches do not give the expression of any personal conviction, and so they do not inspire, as do the speeches of Mussolini, Hitler, Lenin or Roosevelt. Who ever heard a democratic leader of recent times say: "I am convinced this is wrong or that is imperative; and I am personally determined to put it right or to realize what is wanting—I answer with my life if I do not succeed"?

My belief is, that the present crisis is an ethical crisis rather than an economic crisis, and that it is in the main due to the unethical, ethos-destroying philosophy of "general will" upon which the modern democratic state has been based; and also that this philosophy is dying. Put away your textbooks on the theory of General Will and on the intricacies of Representation; they will not be needed these fifty years!

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